# United States Court of Appeals for the Second Circuit



**APPENDIX** 

ORIGINAL

# 74-2666

B75

## United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Respondent,

JOHN EGAN,

v.

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of New York.

#### APPENDIX.

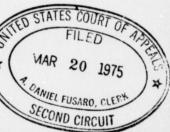
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United States Attorney for the Southern District of New York, Attorney for Respondent, 40 Centre Street,

New York, N. Y. 10007

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1975 (6009)



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DOCKET ENTRIES (S 74 CR. 454, S.D.N.Y.)

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DATE					PROCEEDI					
-25-74	Filed indictment.	. (Supe	erse	eding 74	Cr230	,429 & 4	32. and re	eferred	to	Bra
-29-74	Deft. appears (atty	1	)							
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5-30-74	Filed for Deft. No dismissing co	tice of	Mot In	ion and A	ffidavi	t, return	mble 6/3/74	for an	orde	
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DATE	DOCKET ENTRIES (S 74 CR. 454, S.D.N.Y.)				EES	Di
	PROCEEDINGS	PL	AINT	IFF	DEFEN	DANT
6-3-74	The state of the s	t.	Mo	ion	grante	d.Br
	Court Exhibit # is copy of original Indictment. Court Exhibit	#2	is	amen	ded In	dict
6-4-74	Trial begun with Jury of 12 plus 6 Alternates, All Sworn. Deft.	pres	ent	wit	h Att.	Her
	and John Gross, Ausa.					
6-5-74	Trial c ontinues					
6-6-74	Trial continues					
5-7-74	Trial continues					
6-10-74	Trial continues			N. v. v.	••• • • • • • • • • • • • • • • • • • •	
6-11-74	Trial continues					
6-12-74	Trial continues					
6-13-74	Trial continues					
	Trial continues				<del></del>	
6-17-74	Trial continues		-			
6-18-74	Trial continues. Deft. Rests.					
	Trial continues. Judges charge to Jurors. Jurors start deliberation		-			
6-20-74	Trial continues at 9:30 AM with Jurors continuing their deliberation	ons	at	4:1	2 P.M.	
	Trial confines Jurors Resume deliberations at 9:30 A.M. Jurors ret					
	with verdict on counts one and two only. Verdict, Count one, No	um a	at	4:04	p.m.	
	Jurors cannot agree on counts 3,4,5. Counts 3,4,5, remain open.	OT G	OIL	TY.	Count	two C
	dismissed. Deft. continued on bail with consent of government.	- D-		rs p	orred.	Jur
	ordered. Sentence date to be set after 9/15/74 - BRYAN, J.	le			-	7
		(	2n		-21- 1	
7-8-74	Filed Transcript of record of proceedings, dated furs 5, 6, 7,10 /	/	7	20	,	<u>-</u>
	, auter (11) 1 5, 6, 1 /1)	/	7	17		
7-8-74	Filed Transcript of record of proceedings, dated June 12, 13, 14, 1-		-	10	1001	_
	(h) 12, 13, 17, 17	//	1	12,	1974	
	June 20, 21, 19	24			1	
7-12-78	Filed Transcript of record of proceedings, dated Con 0 29 19	-//		-		
	Filed Transcript of record of wrocochings, dated Gon 2 29 19	1	-			
Oct-16-7	Filed Covt. Memorndum of Law regarding admissibility of Acts and	Dec	7	-+1	70.00	
	Participants in Joint enterprise.	200	-	-	118 01	
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## DOCKET ENTRIES (S 74 CR. 454, S.D.N.Y.)

	A V. JOHN EGAN JUDGE METERER 74 Cr.454	
٠,	aivil Docket Continuation	
/		·
21-7	PROCEEDINGS	Date Order or Judgment Note
	Entry of 6/21/74 is corrected to read as follows:  Count 1 - Jury Disagreement	
	Count 2 - Dismissed by Govt, before Trial.	
	Count 3 - Not Guilty	
	Count 4 - Jury Disagreement Count 5 - GUILTY	
21-7	Count 6 - Disagreement	ļ
21-(	Trial Begun, Govt. moves to dismiss Count 1. Granted - METZHER, J.	
5-74	The state of the s	
274	Filed Transcript of record of processings, second (-4-74	
74	Filed Govt's. Memorandum in support of inspection of medical records of Nora Ega	<b></b>
71.	Filed Govt's Kemorandum in support of its offer of a schedule listing certain evidence introduced at trial	
74	Trial continued	
74	Trial continued	
74	Trial continued Trial continued	
74	Trial continued	
-74	Trial continued - Bothsides rest. Summations, Courts charge - METZNER, J.	
4	Trial continued and concluded - Jury verdict Deft. guilty on Count (4) MOT GUIL on count Six(6). Presentence report ordered. Sentence 12/2/74. Deft. continue. B.O.R METZNER.J.  Filed Memorandum of Law regarding entitlement of govt. to question witnesses etc.	ued on
4	Filed Writ of Habeas Corpus Ad Testificandum	
-741	iled Transcript of record of proceedings, dated Cot 30, 31a no. 1	
2.74	Filed Transcript of record of proceedings, Holed Oct 21,22, 23, 244 Oct 29	
	Filed JUNCHENT (atty. present) The defendant is hereby committed to the custody of	
-	the Attorney General or his authorized representative for imprisonment for a	
	States Code: Section 1208(2) YEARS on count 4, pursuant to Title 18; United	- for more on a
_	States Code: Section 4208(a)(1) with perole eligibility date of (8)months.  1 year on count (5) to run concurrently with count 4. The defendant is	
	continued on R.B.R. pending appeal METZNER.J. (copies issued)	
-74	Filed Notice of Appeal from the judgment entered on 12/2/74, to U.S.C.A. 2nd Circ	uit
	iled Transcript of record of proceedings, sales   Die 2-74	
	Filed notice that the orginal record on appeal has been certified and transmitted to the USCA this date.	
75	Filed notice that the original record on appeal has been certified and transmitted to the USCA this date.	
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## DOCKET ENTRIES (S 74 CR. 454, S.D.N.Y.)

DATE	PROCEEDINGS	Dat
01-15-74	Filed order that Luis Martinez surrender to Allenwood Federal Penitentiary on Jan 1975, MetzneryJ.	• I
Feb 12-7	5 Filed stipulation that USCA take judicial notice of certain papers & that copies of said papers be transmitted to USCA as part on record on appeal.	
2-20-75	Sin I thank I to the state of t	
02-10-75	Fired transcript dated June 3 and 4, 1974	
03-05-2	Filed Transcript of record of proceedings, day May 33-74	
02-20-75	Filed notice that the supplemental record on appeal has been certified and transmitted to the USCA this date.	
02-13-75	Filed motice pthate the second supplemental record on appeal has been certified and transmitted to the USCA this date.	
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NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

File No. S 74 Cr. 454

-v-

JOHN EGAN,

NOTICE OF APPEAL

Defendant.

Notice is hereby given that John Egan, defendant abovenamed, hereby appeals to the United States Court of Appeals for
the 2nd Circuit from the judgment entered herein on December 2nd,
1974 (per Metzner, U.S.D.J.) (1) convicting him, after a jury
trial and guilty verdict before Judge Metzner, of the crime of
Attempting to Evade and Defeat Payment of Income Tax Due for the
year 1970 (26 U.S.C.section 7201) and sentencing him thereon to
serve a maximum of two and a half years in confinement in a Federal Correctional Institution, with a minimum period of eight
months before becoming eligible for probation; and (2) convicting
him, after a jury trial and guilty verdict before District Judge
Bryan), of the crime of Filing a False and Fraudulent Income Tax
Statement for the year 1970 (26 U.S.C. section 7201(1)), and sentencing him thereon to serve one year in confinement in a Federal
Correctional Institution, said sentence to run concurrently with

#### NOTICE OF APPEAL

the sentence contemporaneously imposed for the violation of 26

U.S.C. section 7201.

VICTOR J. HERWITZ, Attorney for John Egan Office & P.O.Address 22 East 40th Street New York, N. Y. 10016 (Le.2-9470)

TO: Clerk of the United States
District Court in the Southern
District of New York
40 Centre Street
New York, New York 10007

Clerk of the United States Court of Appeals for the 2nd Circuit 40 Centre Street New York, New York 10007

United States Attorney Hon. Paul J. Curran Att. John Gross, Esq. 40 Centre Street New York, New York 10007

Mr. John Egan 3 Smith Court Munsey, New York 10952

### JUDGMENT AND COMMITMENT ORDER (S 74 CR. 454).

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DEFENDANY	don non	Dacket No.	74 0	r. 454	
1.3	The Late of the La	MAN CONTRACTOR	nakar (e) rieg	3.4	
	In the presence of the afformey for the government the deformant appeared in person on this date		MONTH 12	DAY	1974
CHUNSE!	have counsel appointed by	ed defendant of right to co the court and the defendant to Ctor Hervitz Eaq (Name of count	hereupon walved assist	ance of counsel	tosime to
PIER	GUILTY, and the court being satisfied that there is a factual basis for the plea,  NOT GUILT  There being a GOBING/verdict of	NOLO CONTENDE  Y. Defendant is discharge	150	2.097Av	
กลบุ <b>ท</b> ธ์ &	Defendant has been convicted as charged of the offense(s	ingome tay due or	of owing he hi	man't a	1 1
1.05MENT (	in to the United States of America f and froudule it joint income tax return (Title 26, United States Code; Section of cil take and subscribe a federal i this contained and was verified by a new liter of perjury, and which the def	17201:) as charge ncome tax return written declaration	of in count (he) for the calend	lar yeta d	of 1970

## JUDGMENT AND COMMITMENT ORDER (S 74 CR. 454)

b	
K. Carlo	The court asked whether defendant had anything to say why judgment snould not be pronounced. Because no servicion as was shown, or appealed to the court, the court still dead the details of the court.
	leachy committed to the custody of the Attention of the defendant gunty as charged and conveted and ordered that: The defendant
Red - mil	(2) years on count (1) missions to make the first transfer for a period of
	(a)(1), with parole eligibility date of (8) months.
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PROTATION	(1) year on count (5) to my
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AUGITIONAL	
CE CONVITIONS	In addition to the necial conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the any time during the probation period or within a maximum probation of probation, reduce or extend the period of probation, and at
S- PROLATION	the probation of curring during the probation period
5 4	the state of the s
· 大 · 大 · 人	The court orders commitment to the custody of the Attorney General and recommends,
F 2	The state of the control of the state of the control of the state of the control
D LIEGOTIMENT	a certified copy of this ludgment
P. Dench	and commitment to the U.S. Har-shall or other qualified officer.
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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

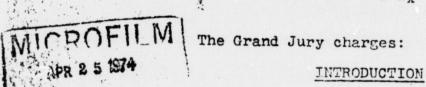
- v -

JOHN EGAN,

Defendant.

74 MIL 454

S74 Cr.





- 1. At all times relevant herein JOHN EGAN, the defendant and his co-conspirators referred to herein, were members of the New York City Police Department, assigned to the Narcotics Bureau, Special Investigation Unit (SIU).
  - 2. The Bureau of Narcotics and Dangerous Drugs, known since July 1, 1973 as the Drug Enforcement Administration, an agency of the United States Department of Justice, and the Bureau of Customs, an agency of the United States

    Treasury Department, at all times relevant herein were agencies of the United States charged with investigating violations of United States criminal laws relating to narcotics.
  - 3. The importation into the United States contrary to law of narcotic drugs and the receipt, concealment, purchase and sale, and the facilitation of the transportation, concealment and sale of narcotic drugs, were, at all times relevant herein, crimes under the laws of the United States.
  - 4. Regulations of the New York City Police Department required, at all times relevant herein, that seizures

from defendants of currency exceeding \$1,000 in connection with arrests be reported to the Internal Revenue Service, an agency of the United States Treasury Department charged with assessing and collecting taxes due to the United States.

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#### COUNT ONE

The Grand Jury further charges;

1. From in or about November 1969, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, JOHN EGAN, the defendant, and Joseph Novoa, Peter Daly, Gabriel Stefania and John Rivera, named herein as co-conspirators and not as defendants, and other co-conspirators to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to defraud the United States and its departments and agencies in connection with the performance of their lawful governmental functions by obstructing and hindering the United States Department of Justice, the United States Treasury Department, the Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs in investigating violations of the narcotics laws of the United States, and by obstructing and hindering the United States Department of Justice. the

United States Treasury Department and the Internal Revenue Service in the ascertainment and collection of information used in assessing and collecting taxes and investigating and prosecuting violations of the tax laws of the United States, and to violate Sections 1510 and 1952 of Title 18, United States Code.

- the defendant, and his co-conspirators would seize from persons to the Grand Jury known and unknown approximately \$400,000 in United States currency, which currency was evidence of violations of the narcotics laws of the United States, and would and did divide such currency among the defendant and the said co-conspirators without reporting the said seizure to the New York City Police Department or to Federal law enforcement authorities, thereby depriving the United States and its departments and agencies of evidence of violations of the narcotics laws of the United States.
- 3. It was further a part of said conspiracy that the defendant and his co-conspirators would and did arrest the persons, and seize and divide currency taken from them, as set forth above in paragraph 2, without reporting said seizures to the New York City Police Department or to the Internal Revenue Service, thereby obstructing and hindering the Internal Revenue Service in the ascertainment and collection of information used in assessing and collecting taxes and in investigating and prosecuting violations of the tax laws of the United States.

- 4. It was further a part of said conspiracy that the defendant and his co-conspirators unlawfully, wilfully, and knowingly would endeavor by means of bribery, misrepresentation, intimidation, force and threats thereof to obstruct delay and prevent the communication of information relating to violations of the United States narcotics laws by other persons to criminal investigators.
- 5. It was further a part of said conspiracy that JOHN EGAN, the defendant, and his co-conspirators and others, would and did travel in interstate commerce between New York, New York and the State of New Jersey, with intent to distribute the proceeds of an unlawful activity, and to otherwise promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on, of an unlawful activity, namely, a business enterprise involving narcotics, and extortion and bribery in violation of New York Penal Law Sections 155.05(e), 155.40, 200.00 and 200.10, and New Jersey statutes Sections 2A:105-2, 2A:105-3 and 2A:151-5, and thereafter the defendants and their co-conspirators would attempt to and did distribute such proceeds commit such crimes of violence, and otherwise promote, manage, establish carry on, and facilitate the promotion, management, establishment and carrying on, of such unlawful activities.
  - 6. It was further a part of said conspiracy that the defendant and his co-conspirators would conceal the existence of the conspiracy and would take steps to prevent disclosure of their activities.

Among the means whereby the defendant end his coconspirators would and did accomplish the unlawful purposes set forth above were the following:

- 7. On or about March 31, 1970, in the Southern District of New York, JOHN EGAN, the defendant, and Gabriel Stefania, Peter Daly and Joseph Novoa, named herein as co-conspirators but not as defendants, and another co-conspirator would and did arrest Alberto Diaz and Raoul Leguizamon for unlawful possession of narcotics and, in connection with said arrests would and did seize approximately \$40,000 in United States currency, which currency was evidence of violations of the narcotics laws of the United States, and divide such currency among the defendant, and the said co-conspirators without reporting said seizure to the New York City Police Department or to Federal law enforcement authorities.
- Joseph Novoa, named herein as co-conspirators and not as defendants, and another co-conspirator would and did arrest Emilio Gonzalez and others in the District of New Jersey and bring them to the Southern District of New York and, in connection with said arrests, would and did seize approximatel \$1,200 in United States currecny and would and did divide such currency among themselves and with JOHN EGAN, the defendant, and Sabriel Stefania, named herein as a co-conspirator and not as a defendant, and did not report the said swigare to the New York City Police Department or to Federal law enforcement authorities.

- Stefania and Joseph Novoa, named herein as co-conspirators and not as defendants, would and did arrest Liliana Torres Moreno and others for unlawful possession of narcotics, and Peter Daly, named herein as a co-conspirator and not as a defendant, would and did arrest Luis Serafin ("Coco") Torres and another person for unlawful possession of narcotics, and in connection with said arrests would and did seize approximately \$205,000 in United States currency, which currency was evidence of violations of the narcotics laws of the United States, and would and did divide all but \$2,900 of such currency among themselves and with the defendant JOHN EGAN and with Charles Worster, named herein as a co-conspirator and not as a defendant, without reporting said seizures to the New York City Police Department or to Federal law enforcement authorities.
- District of New York, John Rivera, named herein as a co-conspirate and not as a defendant, and two other co-conspirators, would and did arrest persons to the Grand Jury unknown for unlawful possession of marcotics and, in connection with said arrests, would and did seize from said persons approximately \$85,000 in United States currency, which currency was evidence of violations of the narcotics laws of the United States, and thereafter on or about September 22 and 23, 1970, in the Southern District of New York, JOHN EGAN, the defendant, and the said co-conspirators would and did divide such currency

among themselves without reporting the said seizure to the New York City Police Department or to Federal law enforcement authorities.

- District of New York, JOHN EGAN, the defendant, John Rivera, named herein as a co-constitator and not as a defendant, and three other co-conspirators, would and did arrest Celestino Valverce, Jose Jara, Mario Arrastia, Nathaniel Hill, and anothe to the Grand Jury unknown for unlawful possession of narcotics and in connection with said arrests, would and did seize approximately \$70,000 in United States currency, which currency was evidence of violations of the narcotics laws of the United States and would and did divide such currency among themselves and with JOHN EGAN, the defendant, without reporting said seizures to the New York City Police Department or to Federal law enforcement authorities.
- 12. On or about November 25, 1970, JOHN EGAN, the defendant, and a co-conspirator, and others, would and did travel between New York, New York and Hoboken, New Jersey.

## OVERT ACTS

In furtherance of, and to accomplish the objects of the said conspiracy, the defendant and his co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

1. On or about March 31, 1970, JOHN EGAN, the defendant, and the co-conspirators referred to in paragraph 7

above, met and seized money at the Taft Hotel, 7th Avenue and 50th Street, New York, New York.

- 2. On or about April 15, 1970, JOHN EGAN, the defendant, and the co-conspirators referred to in paragraph.

  8 above, met and counted money at the Sixth Police Precinct, New York, New York.
- 3. On or about May 11, 1970, JOHN EGAN, the defenddant, and the co-conspirators referred to in paragraph 9 above, met and seized money at the Holiday Inn, 440 West 57th Street, New York, New York.
- 4. On or about September 23, 1970, JOHN EGAN, the defendant, and a co-conspirator referred to in paragraph 10 above, met and divided money in the vicinity of 42nd Street and the West Side Highway, New York, New York.
- 5. On or about November 25, 1970, JOHN EGAN, the defendant, entered and traveled in an automobile and met with co-conspirators referred to in paragraph 11 above in the wid of West 19th Street, New York, New York,
- 6. On or about November 25, 1970, JOHN EGAN, the defendant, traveled with the co-conspirator referred to in paragraph 12 above and with Jose Jara and Celestino Valverde between New York, New York and Hoboken, New Jersey.
- 7. On or about November 25, 1970, in Hoboken, New Jersey, JOHN EGAN, the defendant, and the co-conspirator referred to in paragraph 12 above seized from Celestino Valverde and Jose Jare approximately \$40,000 in United States currency, which currency was evidence of violations by said

persons and others of the narcotics laws of the United States and thereafter released and caused to be released said persons and another to the Grand Jury unknown.

(Title 18, United States Code, Section 371.)

#### COUNT TWO

The Grand Jury further charges:

On or about April 15, 1970, in the Southern District of New York, JOHN EGAN, the defendant, who during the calendar year 1969 was married, did unlawfully, wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by himself and his wife to the United States of America for the calendar year 1969 by concealing and attempting to conceal from all proper officers of the United States of America his true and correct taxable income, by preparing and causing to be prepared, by signing and causing to be signed, by mailing and causing to be mailed, and by filing and causing to be filed, with the District Director of Internal Revenue Service for the Manhattan District, New York, New York a false and fraudulent joint income tax return on behalf of himself and his wife, wherein it was stated that their taxable income for the calendar year 1969 was the sum of \$8,616.00 and that the amount of income tax due and owing thereon was the sum of \$1,667.07, whereas, JOHN EGAN, the defendant, then and there well knew, that their taxable income for the year 1969 was approximately \$9,616.00 on which

income tax was due and owing to the United States of America in the approximate amount of \$1,909.07. (Title 26, United States Code, Section 7201.)

#### COUNT THREE

The Grand Jury further charges:

On or about April 15, 1970, in the Southern Dictrict of New York, JOHN EGAN, the defendant, who resided at 3 Smith Court, Monsey, New York, unlawfully, wilfully and knowingly did make and subscribe a federal income tax return for the calendar year 1969, which contained and was verified by a written declaration that it was made under the penalties of perjury, and which he did not then believe to be true and correct as to every material matter, namely, the entry of \$13,919.08 as total income, whereas JOHN J. EGAN, the defendant then and there well knew that his total income was at least \$14,919.08.

(Title 26, United States Code, Section 7206(1).)

#### COUNT FOUR

The Grand Jury further charges:

On or about April 15, 1971, in the Southern District of New York, JOHN EGAN, the defendant, who during the calendar year 1970 was married, did unlawfully, wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by himself and his wife to the United States of America for the calendar year 1970 by concealing and attempting to conceal from all proper officers of the United States of America his true and correct taxable income, by preparing and

causing to be prepared, by signing and causing to be signed, by mailing and causing to be mailed, and by filing and causing to be filed with the District Director of the Internal Revenue Service for the Manhattan District, New York, New York a false and fraudulent joint income tax return wherein it was stated that their taxable income was the sum of \$15,269.97 and that the amount of income tax due and owing thereon was the sum of \$3,053.90, whereas, JOHN J. EGAN, the defendant then and there well knew, that their taxable income for the year 1970 was approximately \$80,529.97 on which income tax was due and owing to the United States of America in the approximate amount of \$22,323.94.

(Title 26, United States Code, Section 7201.)

#### COUNT FIVE

The Grand Jury further charges:

On or about April 15, 1971, in the Southern District of New York, JOHN EGAN, the defendant, who resided at 3 Smith Court, Monsey, New York unlawfully, wilfully and knowingly, did make and subscribe a federal income tax return for the calendar year 1970 which contained and was verified by a written declaration that it was made under the penalties of perjury, and which JOHN EGAN, the defendant, did not believe to be true and correct as to every material matter, namely, the entry of \$21,833.71 as total income, whereas he then and there well knew that his total income was at least \$87,093.71.

(Title 26, United States Code, Section 7206(1).)

#### COUNT SIX

The Grand Jury further charges:

On or about November 25, 1970, in the Southern Distri of New York and elsewhere, JOHN EGAN, the defendant, and others did travel in interstate commerce between New York, New York, and Hoboken, New Jersey, with intent to distribute the proceeds of an unlawful activity, to commit crimes of violence to further an unlawful activity, and to otherwise promote, manage, establia carry on, and facilitate the promotion, management, establishment and carrying on, of an unlawful activity, namely, a business enterprise involving narcotics, and to commit extortion and bribery in violation of New York Penal Law Sections 155.05(e), 155.40, 200.00 and 200.10, and New Jersey Statutes Sections 2A:105-2, 2A:105-3 and 2A:151-5, and thereafter the said defendant JOHN EGAN, and others, attempted to and did distribute such proceeds, commit such crimes of violence and otherwise promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on, of such unlawful activities.

(Title 18, United States Code, Sections 1952 and 2.)

Foreman Hayden

PAUL J. CURRAN

United States Attorney:

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

INDICTMENT

- v -

S 74 Cr. 454

JOHN EGAN,

AS AMENDED

Defendant.

The Grand Jury charges:

#### INTRODUCTION

1. At all times relevant herein JOHN EGAN, the defendant and his co-conspirators referred to herein, were members of the New York City Police Department, assigned to the Narcotics Bureau, Special Investigation Unit (SIU).

#### COUNT ONE

The Grand Jury further charges:

1. From in or about November 1969, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, JOHN EGAN, the defendant, and John Rivera, named herein as co-conspirator and not as a defendant, and other co-conspirators to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspired, confederate and agree together and with each other to violate. Section 1952 of Title 18 United States Code.

2. It was a part of said conspiracy that JOHN EGAN, the defendant, and his co-conspirators and others, would and did travel in interstate commerce between New York, New York and the State of New Jersey, with intent to distribute the proceeds of an unlawful activity, and to otherwise promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on, of an unlawful activity, namely, a business enterprise involving narcotics, and extortion and bribery in violation of New York Penal Law Sections 155.05(e), 155.40, 200.00 and 200.10, and New Jersey statutes Sections 2A:105-2, 2A:105-3 and 2A:151-5, and thereafter the defendants and their co-conspirators would attempt to and did distribute such proceeds, commit such crimes of violence, and otherwise promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on, of such unlawful activities.

Among the means whereby the defendant and his coconspirators would and did accomplish the unlawful purposes set forth above were the following:

3. On or about November 25, 1970, JOHN EGAN, the defendant, and a co-conspirator, and others, would and did travel between New York, New York and Hoboken, New Jersey.

#### OVERT ACTS

In furtherance of, and to accomplish the objects of the said conspiracy, the defendant and his co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

- 1. On or about November 25, 1970, JOHN EGAN, the defendant, traveled with the co-conspirator referred to in paragraph 12 above and with Jose Jara and Celestino Valverde between New York, New York and Hoboken, New Jersey.
- 2. On or about November 25, 1970, in Hoboken, New Jersey, John Egan, the defendant, and the co-conspirator referred to in paragraph 12 above seized from Celestino Valverde and Jose Jara approximately \$40,000 in United States currency, which currency was evidence of violations by said persons and others of the narcotics laws of the United States and thereafter released and caused to be released said persons and another to the Grand Jury unknown.

(Title 18, United States Code, Section 371).

#### COUNT TWO

The Grand Jury further charges:

On or about April 15, 1970, in the Southern District of New York, JOHN FGAN, the defendant, who during the calendar year 1969 was married, did unlawfully, wilfully and knowingly

attempt to evade and defeat a large part of the income tax due and owing by himself and his wife to the United States of America for the calendar year 1969 by concealing and attempting to conceal from all proper officers of the United States of America his true and correct taxable income, by preparing and causing to be prepared, by signing and causing to be signed, by mailing and causing to be mailed, and by filing and causing to be filed, with the District Director of Internal Revenue Service for the Manhattan District, New York, New York a false and fraudulent joint income tax return on behalf of himself and his wife, wherein it was stated that their taxable income for the calendar year 1969 was the sum of \$8,616.00 and that the amount of income tax due and owing thereon was the sum of \$1,667.07, whereas JOHN EGAN, the defendant, then and there well knew, that their taxable income for the year 1969 was approximately \$9,616.00 on which income tax was due and owing to the United States of America in the approximate amount of \$1,909.07.

(Title 26, United States Code, Section 7201)

#### COUNT THREE

The Grand Jury further charges:

On or about April 15, 1970, in the Southern District of New York, JOHN EGAN, the defendant, who resided at 3 Smith

Court, Monsey, New York, unlawfully, wilfully and knowingly did make and subscribe a federal income tax return for the calendar year 1969, which contained and was verified by a written declaration that it was made under the penalties of perjury, and which he did not then believe to be true and correct as to every material matter, namely, the entry of \$13,919.08 as total income, whereas JOHN J. EGAN, the defendant then and there well knew that his total income was at least \$14,919.08.

(Title 26, United States Code, Section 7206(1).)

## COUNT FOUR

The Grand Jury further charges:

On or about April 15, 1971, in the Southern District of New York, JCHN EGAN, the defendant, who during the calendar year 1970 was married, did unlawfully, wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by himself and his wife to the United States of America for the calendar year 1970 by concealing and attempting to conceal from all proper officers of the United States of America his true and correct taxable income, by preparing and causing to be prepared, by signing and causing to be signed, by mailing and causing to be mailed, and by filing and causing to be filed with the District Director of the Internal Revenue Service for the Manhattan District, New York, New York a

false and fraudulent joint income tax return wherein it was stated that their taxable income was the sum of \$15,269.97 and that the amount of income tax due and owing thereon was the sum of \$3,053.90, whereas, JOHN J. EGAN, the defendant

then and there well, knew, that their taxable income for the year 1970 was approximately \$80,529.97 on which income tax was due and owing to the United States of America in the approximate amount of \$22,323.94.

(Title 26, United States Code, Section 7201.)

#### COUNT PIVE

The Grand Jury further charges:

On or about April 15, 1971, in the Southern District of New York, JOHN EGAN, the defendant, who resided at 3 Smith Court, Monsey, New York unlawfully, wilfully and knowingly, did make and subscribe a federal income tax return for the calendar year 1970 which contained and was verified by a written declaration that it was made under the penalties of perjury, and which JOHN EGAN, the defendant, did not believe to be true and correct as to every material matter, namely, the entry of \$21 33.71 as total income, whereas he then and there well knew that his total income was at least \$87,093.71.

(Title 26, United States Code, Section 7208(1).)

#### · · · COUNT SIX

The Grand Jury further charges:

On or about November 25, 1970, in the Southern District of New York and elsewhere, JOHN EGAN, the defendant, and others, did travel in interstate commerce between New York, New York and Hoboken, New Jersey, with intent to distribute the proceeds of an unlawful activity, to commit erimes of violence to further an unlawful activity, and to otherwise promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on, of an unlawful activity, namely, a business enterprise involving narcotics, and to commit extortion and bribery in violation of New York Penal Law Sections 155.05(e), 155.40, 200.00 and 200.10, and New Jersey Statutes Sections 2A:105-2, 2A:105-3 and 2A:151-5, and thereafter the said defendant JOHN EGAN, and others, attempted to and did distribute such proceeds, commit such crimes of violence and otherwise promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on, of such unlawful activities.

(Title 18, United States Code, Sections 1952 and 2.)

Foreman.

PAUL J. CURRAN United States Attorney DOCKET ENTRIES (74 CR. 312, E.D.N.Y.).

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)÷ .	May 6, 1974						
-26-74	Before WEINSTEI	N.J Case	called- P	leading a	djd to 5-6	5-74 at 10:	00 A.M.
6-74	Before MEINSTE	IN J - CAB	called -	deft EGAN	& come	1 Victor	
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3.5	of not guilty a	ordered a	mentdate	- Indict	ments # 7	4 CR-312 an	d
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DOCKET ENTRIES (74 CR. 312, E.D.N.Y.)

## 74CP 312

DATE	PROČEEDINGS
5-10-74	Before WEINSTEIN, J Case called - Deft and counsel Victor Herwitz present
	Deft's motion to suppress- Hearing ordered and begun- Govt and deft rest-
* *	Hearing concluded - Deft's motion to suppress denied Jurors selected and s
3 3	Trial ordered and begun- Trial contd to 5-13-74 at 10:00 A.M. (JOHN EGAN)
5-13-74	Before WEINSTEIN. J Case called Doct and
-	Before WEINSTEIN, J Case called - Deft and counsel present - Trial resumed Trial contd to 5-14-74 at 9:45 A.M. (EGAN)
5-14-74	Before WEINSTEIN J - case called - deft FCAN & comment
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5-15-74	- der Exan & commet V Herufte
	present - trial resumed - trial contd to May 16, 1974.
5-16-74	Before WEINSTEIN, J Case called - Deft and counsel present - Trial resume
	application to unseal indictment 74CR132 is granted Decision and
	distribution the indictment is denied-Court charges jury- Jury retires to delib
	ate- Deft's motion for a mistrial is denied- Trial contd to 5-17-74 at 104
	(EGAN)
5-17-74	Before WEINSTEIN J - case called - deft EGAN & counsel Victor Herwitz
	present - Jurors resume deliberation at 10:00 am - Jury returns and
	renders a verdict of not guilty as to each of counts 1, 2 & 3 - Jury
	polled and discharged - deft EGAN discharged and bail exonerated.
5-17-74	By WEINSTEIN J - Judgment of Acquittal filed (EGAN)
5-17-74	5 stenographers transcripts filed , 2 transcripts dated May 10, 1974
	at 10:00 am.; one dated May 13, 1974; one dated May 14, 1974 and one
	dated May 15, 1974. (all placed in 74 CR-312.)
5-22-7	Stenographers transcript filed dated May 16, 1974 (EGAN) placed in
	74 CR-312.
1/13/74	By WEINSTEIN I - Order remides
	By WEINSTEIN, J Order requring showing why case should not be dismissed for failure to prosecute filed- ret. 11/21/74 at 9:30 A.M. (DALY)
11-20-74	Before WEINSTEIN I - case called desp paris
	Before WEINSTEIN J - case called - deft DALY not present - Govts request for Bench Warrant is granted - Warrant Ordered and Issued.
	request tot bench wattant is granted - warrant Ordered and Issued.
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#### INDICTMENT (74 CR. 312).

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK	. 17	4Cp	0 1 6
X	13	TOW W	014
UNITED STATES OF AMERICA	INDIC	TMENT	3
- against -	·····		6
U. S. DISTRICT COLUMN N. N.	(18 U. S.	C., §371)	
JOHN EGAN and PETER DALY, APR 19 1974	<b>₹</b>		
Defendants.			
X			

THE GRAND JURY CHARGES:

#### INTRODUCTION

- 1. JOHN EGAN and PETER DALY, the defendants, and Joseph Novoa, Gabriel Stefania, Charles Worster, and Carl Aguiluz, named herein as co-conspirators but not as defendants, at all times relevant herein, were policemen assigned to the Bureau of Narcotics, Special Investigations Unit of the New York City Police Department.
- 2. The Internal Revenue Service, at all times relevant herein, was an agency of the United States Treasury Department charged with assessing and collecting taxes due to the United States and investigating violations of the tax laws of the United States.
- 3. Regulations of the New York City Police Department required, at all times relevant herein, that seizures from defendants of currency exceeding One Thousand Dollars (\$1,000.00) in connection with arrests be reported to the Internal Revenue Service.

#### COUNT ONE

- l. From on or about April 30, 1970, up to and including the date of the filing of this indictment, in the Eastern District of New York and elsewhere, JOHN EGAN and PETER DALY, the defendants, and Joseph Novoa, Gabriel Stefania, Charles Worster and Carl Aguiluz, named herein as co-conspirators but not as defendants, wilfully, knowingly and unlawfully did combine, conspire, confederate and agree together and with each other to defraud the United States and its departments and agencies in connection with the performance of their governmental functions, by obstructing and hindering the Internal Revenue Service in the ascertainment and collection of information used in assessing and collecting taxes and investigating violations of the tax laws of the United States.
- 2. It was part of said conspiracy that the defendants and co-conspirators would arrest Luis Torres, Wladimir Bandera and others and in connection with said arrest would seize and divide among themselves approximately Two Hundred and Thirty Thousand Dollars (\$230,000.00) in United States currency without reporting the true amount of said seizure to the New York City Police Department or the Internal Revenue Service, thereby obstructing and hindering the Internal Revenue Service in the ascertainment and collection of information used in assessing and collecting taxes and in investigating violations of the tax laws of the United States.

## INDICTMENT (74 CR. 312)

3. It was further a part of said conspiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

#### OVERT ACTS

In furtherance of, and to effect the objects of the said conspiracy, the defendants committed the following overt acts, among others, in the Eastern District of New York and elsewhere:

- 1. On or about May 11, 1970 defendant DALY placed a telephone call from John F. Kennedy International Airport, Gunens, New York to the Holiday Inn on West 57th Street, New York, New York.
- 2. On or about May 11, 1970, defendants EGAN and DALY, and co-conspirators Novoa, Stefania, Worster and Aguiluz

#### INDICTMENT (74 CR. 312)

met at the Holiday Inn on West 57th Street, New York, New York. (Title 18, United States Code, Section 371.)

A TRUE BILL.

Cuthing Foreman.

Edwar J. Boy 1. I

EDWARD JOHN BOYD V United States Attorney Eastern District of New York

DATED FEB. 4 3

BY.

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# JUDGMENT OF ACQUITTAL (74 CR. 312).

UNITED STATES DISTRICT COURT FOR THE	U. S. DISTRICT COURT E.D. N.Y  MAY 1 ~ 1974
EASTERN DISTRICT OF HE! YORK	TIVE A.M.
United States of America )	M'FILMED
JOHN EGAN	No. 74 CR 312

Information

The indictment herein having regularly come on for trial before the Honorable JACK B. WEINSTEIN and a jury,

United States District Judge, with the way jury, and a verdict having been rendered finding the defendant

JOHN EGAN

not guilty,

IT IS ADJUDGED that the defendant

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# JUDGMENT OF ACQUITTAL (74 CR. 312)

is	not	guilty	o:f	the	charge	in	said	indictment.
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Dated: Brooklyn, New York

May 17

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Entered:

Lewis Orgel

CLERK OF THE COURT

U. S. D. J.

DATED FEB.14

BY

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DOCKET ENTRIES (74 CR. 348, E.D.N.Y.)

# 74CR 348

DATE	PROCEEDINGS
5-14-74	Before WEINSTEIN J - case called - deft EGAN & counsel Victor Herwitz
-	present - trial resumed - trial contd to May 15, 1974 at 9.45 am
16-74	Before WEINSTRIN, J Case called- Deft and counsel and
·	dove application to unseal indictment 74CR132 is granted-Deft's motion
	to dismiss the indictment is denied- Court charges tury Turn nations to
	deliberate- Deft's motion for a mistrial denied-Trial contd to 5-17-74 a
	10:00 A.M. (EGAN)
5-11-74	Before WEINSTEIN J - case called - deft EGAN & counsel V. Herwitz
	present - Jurors resume deliberation at 10:00 am - Jury returns and
	renders a verdict of not gullty as to each of counts 1, 2 & 3 - Jury
	polled and discharged - deft EGAN discharged & bail exonerated.
5-17-74	By WEINSTEIN J - Judgment of Acquittal filed (EGAN)
5-17-74	5 stenographers transcripts filed: 2 transcript dated May 10 1074.
	one dated May 13, 1974; one dated May 14, 1974 and one dated May 15
5-22-74	1974 (all placed in 74 CR 312)
0-22-14	Stenographers transcript filed dated May 16, 1974 (Egan) placed in
	74 CR-312
1-20-74	Before WEINSTEIN J - case called - deft DALY not present - Govts
	request for Bench Warrant is granted - Warrant Ordered and Issued.

## INDICTMENT (74 CR. 348).

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

JOHN EGAN and PETER DALY,

0

Defendants.

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THE GRAND JURY CHARGES:

MAY 3 1974

TIME A.M.....P.M.

INDICTMENT

T. 18, U.S.C., §242, §2 and §371.

740H 348

#### INTRODUCTION

- 1. JOHN EGAN and PETER DALY, the defendants, and Joseph Novoa, Gabriel Stefania, Charles Worster and Carl Aguiluz, named herein as co-conspirators but not as defendants, at all times relevant herein, were policemen assigned to the Bureau of Narcotics, Special Investigations Unit of the New York City Police Department, acting under color of law of the State of New York.
- 2. Luis Torres, Wladimir Bandera, Lilliana Torres, Jorge Martinez Diaz, Guillermo Saavedra, John Doe, also known as "Lito" and John Doe, also known as "El Tio", at all times relevant herein, were inhabitants of the State of New York.
- 3. The Fifth and Fourteenth Amendments to the Constitution of the United States of America, at all times relevant herein, provided that no person shall be deprived of life, liberty and property without due process of law.

#### INDICTMENT (74 CR. 348)

4. The Fourth Amendment to the Constitution of the United States of America, at all times relevant herein, provided that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated.

#### COUNT ONE

On or about and between the 1st day of May 1970 and the 13th day of May 1970, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, JOHN EGAN and PETER DALY, the defendants, together with Joseph Novoa, Gabriel Stefania, Charles Worster and Carl Aguiluz, named herein as co-conspirators but not as defendants, wilfully, knowingly and unlawfully did combine, conspire, confederate and agree together and with each other to violate Section 242 of Title 18, United States Code.

- l. It was part of said conspiracy that the defendants and coconspirators wilfully, knowingly and unlawfully would use their
  authority as police officers to conduct electronic surveillance of
  Guillermo Saavedra at the New York Hilton Hotel in New York, New York,
  thereby depriving the aforesaid Guillermo Saavedra of a right secured
  and protected by the Fourth Amendment to the Constitution of the United
  States, namely, the right to be secure against unreasonable searches and
  seizures.
- 2. It was further a part of said conspiracy that the defendants and co-conspirators wilfully, knowingly and unlawfully would use their authority as police officers to take, extract and appropriate to them-

#### INDICTMENT (74 CR. 348)

selves approximately \$230,000 from Luis Torres, Wladimir Bandera, Lilliana Torres, Jorge Martinez Diaz, Guillermo Saavedra, John Doe, also known as "Lito" and John Doe, also known as "El Tio", thereby depriving the aforesaid individuals of a right secured and protected by the Fifth and Fourteenth Amendments to the Constitution of the United States, namely, the right not to be deprived of property without due process of law.

- 3. It was further a part of said conspiracy that the defendants and co-conspirators wilfully, knowingly and unlawfully would use their authority as police officers to arrest Wladimir Bandera, Lilliana Torres, John Doe, also known as "Lito" and John Doe, also known as "El Tio" and hold the aforesaid individuals in custody at the Holiday Inn in New York, New York, thereby depriving the aforesaid individuals of a right secured and protected by the Fifth and Fourteenth Amendments to the Constitution of the United States, namely, the right not to be deprived of liberty without due process of law.
- 4. It was further a part of said conspiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent the disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Eastern District of New York and elsewhere:

# OVERT ACTS

1. On or about May 11, 1970 the defendant DALY placed a telephone call from John F. Kennedy International Airport, Queens, New York, to the Holiday Inn on West 57th Street, New York, New York.

#### INDICTMENT (74 CR. 348)

2. On or about May 11, 1970 defendants EGAN and DALY and co-conspirators Novoa, Stefania, Worster and Aguiluz met at the Holiday Inn on West 57th Street, New York, New York.

(Title 18, United States Code, §371)

#### COUNT TWO

On or about the 11th day of May 1970, within the Eastern District of New York, JOHN EGAN and PETER DALY, the defendants, and Joseph Novoa, Charles Worster, Gabriel Stefania and Carl Aguiluz, named herein as coconspirators but not as defendants, wilfully, knowingly and unlawfully did take, extract and appropriate to themselves approximately \$230,000 from Luis Torres, Wladimir Bandera, Lilliana Torres, Jorge Martinez Diaz, Guillermo Saavedra, John Doe, also known as "Lito" and John Doe, also known as "El Tio", thereby depriving the aforesaid individuals of a right secured and protected by the Fifth and Fourteenth Amendments to the Constitution of the United States, namely, the right not to be deprived of property without due process of law.

(Title 18, United States Code, \$242 and §2)

Edward J Bayelly XIX

NITED STATES ATTOONON

DATED FEB. 4

A TRUE BILL

#### JUDGMENT OF ACQUITTAL (74 CR. 348)

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EDNY-1
UNITED STATES DISTRICT COURT U.S. DISTRICT COURT OF THE MAY,
FOR THE MAY.
1 2 107.
P.M
United States of America
No. N'FILMED
JOHN EGAN } 74 CR 348
The indictment

The indictment herein having regularly come on for trial before the Honorable JACK B. WEINSTEIN and a jury, United States District Judge, without exxjury and a verdict having been rendered finding the defendant

not guilty, JOHN EGAN

IT IS ADJUDGED that the defendant

is not guilty of the charge in said indictment.

Dated: Brooklyn, New York

May 17 19 74

U. S. D. J.

Entered:

CLERK OF THE COURT

DATED FRB.4 125

LEVIL OF FREE PROPERTY OF THE PROPERTY OF THE

# RELEVANT PORTIONS OF TRIAL TRANSCRIPT IN THE TRIAL OF S 74 CR. 454 BEFORE JUDGE BRYAN (a) MOTION TO DISMISS AT CLOSE OF GOVT'S CASE.

2 unless the Court has questions of me.

THE COURT: The renewed motion for severance is denied.

MR. HERWITZ: Now, if your Honor please, with respect to Counts 2 and 3, I did include in my statement of argument my contention that by reason of the acquittal of Mr. Egan in the Brooklyn trial, as to which your Honor has been apprised, that there constitutes a collateral estoppel with respect to Counts 3 and 4, and a double jeopardy with respect to Counts 3 and 4.

THE COURT: I think we have gone into this quite thoroughly, Mr. Herwitz, and there is no use repeating the arguments again.

MR. HERWITZ: I am not going to repeat them, but I am making my motion again.

THE COURT: You are making your motion again on those grounds, and that motion is denied.

I will now retire for a few minutes and consider your motion directed at Count 2, and let you know, and, incidentally, since we are going ahead here, and the defendant intends, as I understand it, to put in a case, if there is a witness to be available to the defendant, I would like to have him here by the time I get back.

(Recess.)

(b) OFFER OF PROOF.

21 22

MR. GROSS: A persecution?

itout, your Honor, without any prior notice they arrested him. There were two indictments in the Southern District, two indictments in the Eastern District. They asked for, I think, 40, 50 or 100 thousand dollars bail. I was there, both in the Southern and in the Eastern District.

They asked for, I think, 40, 50 or 100 thousand dollars bail. I was there, both in the Southern and in the Eastern District.

Then they ultimately withdrew these indictments and they indict him a couple of more times in the Southern District and in the Eastern District. I think I am

You are not entitled to that.

may. Sastern District, so the

entitled, unless you rule against me, your Honor --

business, and I would like to raise it in a different context. I agree that the decision in the Brooklyn case doesn't preclude the prosecution here under the income tax because of the fact that venue was in issue, among other things.

However, I submit that I should be permitted to prove, as an established fact, that the crimes alleged against the defendant were not committed in the Eastern

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(b) OFFER OF PROOF

District and that that, at least, was what was decided by the determination in Brooklyn. The theory is in this case, your Honor, that money was seized at JFK Airport and that as a result of the seizure of that money at JFK Airport the defendant participated in the proceeds of that, and it is also the theory of the prosecution in this case that after the distribution to Egan, Aguiluz and Daly distributed part of that money in the Eastern COMPANY THE RESIDENCE OF THE PARTY OF THE PA District.

Now, it is true that the determination in the For Edward Control Eastern District did not decide the fact that Egan did The state of the state of the not commit a crime -- that crime in the Southern District, but, your Honor, it is certainly established as an incontrovertible fact that that crime was not committed in the Eastern District, so that I wish to have the jury 二、黄金色、 三十二条 ultimately charged, and I want to prove, that that crime --W. 1964 that this is an established fact.

After all, if they should find on the record here that if it wasn't committed in the Eastern District, it wasn't committed at all, that is relevant and satisfactory to me. Certainly on a collateral estoppel --

THE COURT: There is no use in your going further on that. I am going to rule against you on that.

MR. HERWITZ: Yes, sir.

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RELEVANT PORTIONS OF TRIAL TRANSCRIPT IN THE TRIAL 788 OF S 74 CR. 454 BEFORE JUDGE MITZNER (a) OFFER OF PROOF.

the defendant's conviction before Judge Bryan. The answer is no, you cannot. Sentence has not been imposed. There is no judgment of conviction.

MR.HERWITZ: If your Honor please, I would like to urge upon you what can I succeed in urging upon Judge Bryan. Mr. Egan was tried in the Eastern District, as I think you know, and he was convicted on various charges flowing out of the so-called airport case which is Item No. 2 in this proceeding. In that case, the bank deposits of May 27th and May 29th were introduced in evidence and one of the counts in that indictment was the conspiracy to defraud the United States Government of taxes or failing to voucher money obtained.

Now, in that case I argued to the jury and requested Judge Weinstein to charge on the question of venue, in other words, there was a question of whether if a crime was committed it was committed in the Eastern District or in the Southern District. Naturally, since you try one case at a time, I argued the venue question and at my request Judge Weinstein charged it. As a consequence, the determination by that jury as a technical matter doesn't reveal whether it was based on the venue question, which I appreciated, which is why I assume that I am foreclosed, and I think I was foreclosed by Judge 'Bryan, from

\* Should read " argunted"

RELEVANT PORTIONS OF TRIAL TRANSCRIPT IN THE TRIAL 789 OF S 74 CR. 454 BEFORE JUDGE MITZNER (a) OFFER OF PROOF

claiming res adjudicata and collateral estoppel.

However, I argued unsuccessfully to Judge Bryan, and I would like to argue this to your Honor, that whereas the government may not be collaterally estopped in this case from proving that particular item and it is not double jeopardy technically as such, but I do say that the determination that was made in the Eastern District case determined something, your Honor.

THE COURT: Determined the defendant was not guilty.

MR. HERWITZ: Well, it determined some fact.

It at least determined the fact that the defendant had not committed that crime in the Eastern District.

THE COURT: Maybe.

MR. HERWITZ: Sorry, your Honor.

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RELEVANT PORTIONS OF TRIAL TRANSCRIPT IN THE TRIAL OF S 74 CR. 454 BEFORE JUDGE MITZNER (a) OFFER OF PROOF

THE COURT: He could have been acquitted on some other theory. They could determine that the crime was committed in the Eastern District but he was not guilty of the crime.

MR. HERWITZ: That's right. At least something was determined, some fact was determined by that Court's decision, which is respectfully binding on the government. I believe that the facts that were determined in that case, since it directly involves a particular item in this case, it should be admissible as evidence as proof of what was determined in that case.

THE COURT: He can't come to that.

MR. HERWITZ: Something was determined. It was determined that the defendant was not guilty as charged. Among the charges was that he had committed certain crimes in the Eastern District of New York. At least that was determined, your Honor.

THE COURT: I don't see it.

MR. HERWITZ: I can't make any more progress with you than I did with Judge Bryan.

THE COURT: No.

MR. HERWITZ: I except.

I assume that the Court will take judicial notice of those indictments and what the determination was. I can make a record on that if you wish.

(b) MOTION TO DISMISS AT CLOSE OF GOVERNMENT'S 798

MR. HERWITZ: If your Honor please, I move at the close of the government's case for an order of acquittal on the ground, among others, that the government's case as to each item of the four items that are here involved is more than incredible and it is virtually inconceivable that any of those charges are supported by the evidence to the extent that it should go to a jury, that it is a jury question.

Before I go into my reasons for that statement, I would like to go back, if I may, to what we were discussing last night before we adjourned, and that is the so-called airport item of 1970 which was the subject of the trial mentioned in Brooklyn.

As I said yesterday, it may be that for very technical reasons there is not an orthodox case of double jeopardy or even collateral estoppel.

I want to move to dismiss that particular item on the further ground, your Honor, I respectfully submit, wholly aside from the technicalities, it als been an unfair action by the United States government to first put Mr. Egan on trial in the Eastern District of New York --

THE COURT: May I say something? These arguments have been made many, many times before the unfairness of the government starting a case at one place and instituting

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	(b) MOTION TO DISMISS AT CLOSE OF GOVERNMENT'S CASE
2	a case in another one. The courts have constantly said that's
3	all right. It may sound unfair but it's all right.
4	MR. HERWITZ: As your Honor well knows, some-
5	times arguments have been rejected time
6	THE COURT: The 17th Floor if there happens to
7	be a conviction.

MR. HERWITZ: I understand. I am making my record in that regard, your Monor.

As your Honor knows, the most famous case, where arguments have been rejected hundreds of times, and then the Supreme Court came down with a new ruling. There are many anecdotes about that.

THE COURT: Wolf against Colorado.
Make the record.

what happened in the old search and seizure case, a good lawyer said "It's no good and I can't make the record," and the stupid lawyer who wanted to throw everything in, he turned out to be right. Buckily the Court of Appeals of the State of New York recognized the distinction.

MR. HERWITZ: Yes, your Honor.

Make your record.

In the Eastern District Ar. Egan was charged with conspiracy to, among other things, violating the income tax laws of the United States by obtaining money and failing

(b) MOTION TO DISMISS AT CLOSE OF GOVERNMENT'S

to voucher it. He was charged with civil rights violations in that he seized money from persons, or conspired to seize money from persons, who were arrested in violation of their civil rights. It was the airport case which is the second item before your Honor.

In the case in Brooklyn, the government called not only Aguiluz, it called the alleged victims, the persons from whom allegedly the money had been stolen. It introduced evidence in Brooklyn the bank deposits that were made by Egan two weeks after that occurred. He deposited, I think, \$5,000 or \$5500, and \$5,000 within a period of two weeks thereafter.

The jury acquitted Mr. Egan on that charge.

At the very same time when that case was going on this indictment was pending here. It's one government and it's one Department of Justice.

I respectfully submit that it was unfair to the extent of being a violation of due process of law for the government to do that as it has done. The result has been Mr. Egan has not only been tried on the airport case once, he has been tried on the airport case again before Judge Bryan, which was other than a disagreement and could very well be, if he were convicted here, it might be on the basis of the airport case, and I respectfully submit

(b) MOTION TO DISMISS AT CLOSE OF GOVERNMENT'S 801
CASE
for all of these reasons that there is a violation of due
process of law, and with reference to that specific item
it should be dismissed.

THE COURT: The motion regarding that specific item is denied.

MR. MERWITZ: Now, if your Honor please, I know your Honor has paid close attention to the testimony of the witnesses and I need not review it. I'm going to renew my motion again at the end of the entire case to acquit, and I won't take up the timeof the Court by going over all of the facts of the case to support my contention that the evidence is so incredible that as a matter of law there should be an acquittal.

THE COURT: Motion denied.

MR. HERWITZ: If your Honor please, before we get started, may I request — I'm going to call Mr. Egan. I've told Mr. Gross that I would like most of the government witnesses recalled and he told me to take it up with your Honor and to state the reasons why I wanted them recalled.

THE COURT: Recalled?

MR. HERHITZ: Yes, your Monor.

I want Martinez, Rivera, Sottile and Admiluz recalled for one reason, your honor: Hr. dara restified

(c) MOTION TO STRIKE TESTIMONY IN "AIRPORT CASE" 967 AND OFFER OF PROOF. Z law because the people have failed as a matter of law to 3 establish the defendant's guilt beyond a reasonable doubt 4 and that no jury question is presented on either of the 5 counts in the indictment, your Honor. 6 THE COURT: Your motion is denied, Mr. Herwitz. 7 MR.HERWITZ: Off the record. 8 (Discussion off the record.) 9 THE COURT: On the record. 10 I assume that Mr. Herwitz has made all the 11 motions necessary to be made at the end of the entire case 12 and they are denied. 13 MR. HERWITZ: I again renew that motion to 14 strike out all the testimony with respect to the airport 15 case. If I wasn't cleared, I want to offer in evidence 16 to this jury the judgment of acquittal in the Eastern District 17 on the airport case. 18 THE COURT: I have ruled on that and denied that 19 application before. I deny it again. 20 Bring in the jury. 21 MR. HERWITZ: So the jury doesn't get any 22 confusion, that woman in the courtroom is my secretary,

THE COURT: There will be other people walking in

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not Mrs. Egan.

that you don't know at all.

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#### (d) CHARGE TO THE JURY.

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#### CHARGE OF THE COURT

. (Metzner, J.)

THE COURT: Mr. Henderson, ladies and gentlemen of the jury: We have now reached the point in this trial where you are about to enter upon your final function as jurors, which is, of course, one of the most sacred duties of citizenship.

You have given careful attention to the evidence during the course of the trial and I am certain that you will conduct, your deliberations in the same fine spirit that you have so far displayed and with impartiality and fairness reach a just verdict in this case.

In our court system the functions of the Judge and the functions of the jury are clearly defined.

It is my duty to instruct you as to what the law It is your duty to accept the law as I state it to you.

Just as I am the exclusive judge of the law so you are the exclusive judges of the facts. You alone determine the credibility of the witnesses and the weight, effect, and value that should be given to their testimony, It is up to you to determine from the evidence which you have heard what the facts are in this case and from those facts 21 - | decida whether the defendant has violated the law.

This is a criminal prosecution in which the

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(d) CHARGE TO THE JURY

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government is one party and the defendant is the other.

The fact that the government is a party entitles it to no

greater and to no lesser consideration than any other party.

It is entitled to the same consideration as given to the

The indictment here contains counts or charges and names John Egan as the defendant.

defendant, no more and no less.

The first count is, in substance, that John Egan wilfully attempted to evade federal income taxes for the year 1970 by failing to include in his tax return a substantial amount of income received in that year.

The second coun t charges Egan with having travelled in interstate commerce for the purpose of committing an unlawful activity, namely receiving a bribe.

This case must be decided within the scope of the charges against the defendant as contained in the indictment, but before discussing the law applicable to the charges of the indictment let us consider some general principles which apply in every criminal case.

An indictment itself is mt evidence. It merely describes the charges made against a defendant and may not be considered by you as evidence of the guilt of a defendant. Nor can the fact that a grand jury has found this indictment in any way detract from the presumption

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count.

(d) CHARGE TO THE JURY

of innocence with which the law surrounds a defendant

unless and until his guift is proved beyond a reasonable

 Each of the two counts which you will consider alleges the commission of a separate and distinct offense. It will be necessary for you to reach a verdict of guilty or not guilty as to each count of the indictment. You must consider and weigh the evidence separately as to each

The fact that you may find the defendant guilty or not guilty of one of the offenses charged should not control or influence your verdict with respect to any other offense of which the defendant is charged.

The defendant has denied the charges in the indictment. By his plea of not guilty he has put into issue every material fact a leged in the accusation brought against him.

Accordingly, the government having made the charge has the burden of proving beyond a reasonable doubt each material element of each count of the indictment.

This burden of proof never shifts. It remains with the government throughout the entire trial and during your deliberations as jurors.

A defendant does not have to prove his innocence

He is presumed to be innocent and this presumption is overcome only when you reach a conclusion from the evidence that his guilt has been established beyond a reasonable doubt.

What is meant by a reasonable doubt? There
is nothing mysterious about the term. It means, as the
words themselves indicate, a doubt based upon reason and common
sense which arises after consideration of all the evidence.
Reasonable doubt is a doubt which would cause reasonable
persons to hesitate to act in matters of importance to
themselves. It is not a vague, speculative, imaginary
something and a person may not be convicted on mere suspicion
or conjecture.

On the other hand, a reasonable doubt does not exist merely because a juror does not wish to perform an unpleasant duty.

A reasonable doubt may arise not only from the evidence produced but also from the lack of evidence. A defendant may also rely upon evidence brought out on cross examination of any of the witnesses who have testified on behalf of the government.

Now it is not necessary for the government to prove the guilt of a defendant beyond any possible doubt.

Proof is usually not a matter of mathematical or absolute

certainty.

(d) CHARGE TO THE JURY

In the nature of things it cannot be. But to sustain a conviction there must be such proof as satisfies your reason as intelligent people beyond any reasonable doubt that the defendant is guilty as charged.

If you do not have a reasonable doubt of the defendant's guilt as to the material elements of the charge, then you should return a verdict of guilty on that count.

On the other hand, if you do have a reasonable doubt as to the defendant's guilt as to any of the material elements of the crime charged, then you must return a verdict of not guilty as to that count.

Now let us turn to Count 1.

Count 1 charges that John Egan unlawfully, wilfully and knowingly attempted to evade a large part of the income tax due and owing by him and his wife for the year 1970 by filing a false and fraudulent income tax return stating that their taxable income was some \$15,200 and the amount of tax due was some \$3,000 whereas Egan well knew that their taxable income for 1970 was approximately \$80,000 and the income tax due was approximately \$22,000.

The defendant's wife is mentioned simply because a joint income tax return was filed. There is no charge against Mrs. Egan that she had any knowledge of any of the

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PGjw 1 (d) CHARGE TO THE JURY matters testified to by the government's witnesses.

This count relates to the crime of income tax evasion. In order to establish the crime of income tax evasion the government must establish beyond a reasonable doubt each of the following thee elements:

First, that a substantial amount of federal income tax was due and owing by the defendant and his wife for 1970; in other words, an amount of federal income tax is due and owing over and above the amount shown on the income tax return for that year which was filed by the defendant.

Second, that the defendant did an affirmative act of wrongdoing which constituted an attempt to evade or defeat the tax.

Third, that the defendant wilfully attempted to evade and defeat the tax.

Now, with respect to the first element of this count, the government must prove that the defendant had taxable income which the defendant failed to report on the joint income tax return, and that had he reported such income there would have been a substantial tax due and owing to the United States above the tax calculated on the return.

Income, even if it is received from an illegal

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(d) CHARGE TO THE JURY

the law and is considered as income, just like any other income received. Neither the exact amount of the unreported income nor the exact amount of the tax allegedly due thereon may be proved by the government to a mathematical certainty.

Nor is it necessary that the government prove all figures precisely as they are charged in the indictment.

The government must demonstrate beyond a reasonable doubt only the attempted evasion of a substantial portion of Egan's tax liability.

If you should find the government has failed to establish beyond a reasonable doubt that there was a substantial understatement of the total income or tax due in the return, then it has failed to establish an essential element of the crime with respect to Count 1 and you are required to return a verdict of acquittal on that count.

What do I mean by "substantial"? There is no absolute amount or particular percentage I can give you as a criteria.

If you find there is an understatement you should measure the size of that understatement as against

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the size of the money involved in the returns of the Egans. In other words, you may compare the amount of income reported by the Egans with the amount that you find by the evidence was not reported. This unreported amount is the understatement. The amount of the understatement can only be substantial if it is substantial in relation to the other figures involved, and you should consider in this connection all the attendant facts and circumstances in this case.

If you conclude that there was due and owing a substantial amount of tax over and above the amount reported on the tax return for 1970, then you have to go on and consider whether for 1970 the defendant wilfully acted to evade the tax; thatis, he wilfully filed a false and fraudulent income tax return in an attempt to avoid his tax liability.

The affirmative act of wrongdoing to evade the tax due would be the filing of a false return by failing to report a substantial portion of the income which he knew the and his wife had and which he knew it was hid duty to state and report.

Wilfulness on the part of the defendant -- and this act of his must have been wilful -- is an essential element of the crime charged in Count 1.

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#### (d) CHARGE TO THE JURY

You may find that the defendant acted knowingly and wilfully if he acted voluntarily and purposely and with specific intent to do something which the law forbids. That is to say, he must have acted with evil motive or bad purpose to disobey or disregard the law and not because of negligence mistake, inadvertence or other innocent reason.

prove directly what a person knew or intended. You cannot look into a person's mind and see what his intentions were or what he knew. But a careful and intelligent consideration of the facts and circumstances shown by the evidence in any given case as to a person's actions and statements enables us to infer with a reasonable degree of certainty and accuracy what his intentions were in doing or not doing certain things and the state of his knowledge.

If you find that the government has failed to convince you beyond a reasonable doubt that the defendant wilfully understated his income and the amount of tax due with the purpose of defrauding the government, you must return a verdict of acquittal.

If, however, you find the government has established those facts beyond a reasonable doubt, you may find the defendant guilty on the tax evasion count.

Now, with respect to Egan's 1970 income tax

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(d) CHARGE TO THE JURY return the government contends that during the year 1970 Egan received up to \$55,600 from various officers in the Special Investigating Unit which he commanded, which was a part or share of the money taken as bribes or stolen from suspected or accused narcotics dealers.

The return filed by Egan for the calendar year 1970 stated his taxable income as \$15,200. The government contends his taxable income for that year due to the illegal payments which it claims he received was at least some \$55,000 higher than the figure stated in the return, and that therefore the return which he executed and filed was false and fraudulent and that he knew it was false and fraudulent in that respect.

The government relies as to this count on the testimony of former members of the Special Investigating Unit who took the stand, Aguiluz, Sottile, Rivera, Martinez and Stefania, all of whom admitted participation in the illegal shakedowns, bribes, and other illegal payments from people involved in the narcotics trade, and they testified with respect to various incidents of the payments of money to Egan.

The government also relies on the testimony of Jara and Valverde who are confessed narcotics dealers as to these payments.

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# (d) CHARGE TO THE JURY

There was testimony given as to four instances in which the government claimed that Egan received a total of some \$55,000.

The first of these allegedly took place in the Taft Hotel on March 31, 1970. This related to the so-called Leguizamon case in which \$40,000 was allegedly taken from Leguizamon at the Taft Hotel and divided among Stefania, Novoa, Daly, Egan and Aguiluz. And it is contended that Egan received \$8,000 as his share of this money.

The second alleged incident occurred on May
11, 1970. It is claimed here that out of some \$56,000
taken from persons arrested at Kennedy Airport and \$20,000
in cash taken from a accused named Banderas and others,
Egan received some \$15,000.

The next incident is alleged to have occurred on September 22md and 23rd, 1970 and Egan is alleged to have received \$15,000 as his split of monies taken by Special Investigating Unit detectives from several Chileans suspected of drug involvement at 93rd Street and Second Avenue, Manhattan.

The last of these four incidents concerns money allegedly to have been received from Valverde, an admitted drug dealer, after it was claimed he was

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arrested on 14th Street.

This incident relates to the trip that was taken by car to New Jersey with Mr. Egan and Aguiluz in the front seat and Valverde and Jara in the back seat. There was testimony that Valverde on that Hoboken expedition obtained \$38,000 from someone in Hoboken which was brought back to the car by Jara, and that in return for this money the charges against Valverde were to be dropped and Egan rederved \$17,000 as his share.

There was also evidence that during 19/0 Egan made some forty-four cash deposits in seven different savings accounts in banks in New York City, Yonkers and Spring Valley and one checking account.

Many of the deposits were made shortly after the occurrence of the incidents aout which you heard testimony The government contends that these deposits were made with the money received by Egan as bribes or other payments illegall obtained or given to him.

You will recall there was some evidence introduced to the effect that John Egan failed to report interest income received on his savings bank deposits on his 1970, 19/1 and 1972 tax returns. The failure to report this interest income is not part of the charge on

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which Egan is being tried. The evidence on that subject thay be considered by you for only a limited purpose.

You may consider that evidence solely on the question of whether Egan intended to evade taxes in 1970.

Now, Egan flatly denies that he received any monies from any of the four incidents involving suspected or arrested narcotics dealers which occurred in 1970, as testified to by the former members of his unit.

MR. Egan says that the substantial deposits of cash which were made in is various savings accounts in 1970 came from his accumulated cash savings over a long period of years which he had kept in his house and the savings of his daughter and son-in-law since 1965. His daughter and so-in-law and their four children live with him in Monsey, New York.

He says the reason why he kept this large amount of cash representing his accumulated savings in his house was because his wife had been repeatedly hospitalized for mental illness and he didn't want these sums to be a matter of record since this might enable the hospitals in which she was confined to collect monies for hospital expenses.

With respect to his failure to include in his return his interest on his savings bank deposits,

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(d) CHARGE TO THE JURY
this, he says, was merely an oversight on his part and
was not done with any intent to defraud the government

out of taxes.

Turning now to the second count of the indictment, it charges that John Egan traveled between New York and New Jersey to carry out the unlawful purpose of receiving a bribe as a police officer. The federal law which forbids traveling in interstate commerce, or makes it a crime to travel in interestate commerce, for the purpose of carrying on an unlawful activity is rather complicated.

There are a number of elements the government must establish beyond a reasonable doubt in order to prove the second count of the indictment.

First of all, there must be travel in interstate commerce by the person charged. Egan admits that he traveled betweenNew York and Hoboken, New Jersey.

In the second place, such travel must be with the intent to promote or carry, on or facilitate an unlawful activity in violation of the laws of the state. The government claims that the unlawful activity which Egan intended to carry out was bribery in violation of the New York Penal Law.

Let's understand what the law means by the term

(d) CHARGE TO THE JURY "bribery."

Bribery is the payment of money to a public official, in this case a police officer upon the understanding that he will take or refrain from taking some official action.

In this case the charge is, as to the proposed illegal activity is, to obtain money from Valverde as a bribe in return for not bringing or pressing criminal charges against him.

In order to violate this section of the law, the travel in interstate commerce must be with the intent of furthering the obtaining of a bribe.

I have talked to you about intent and wilfulness in connection with the charge of income tax evasion.

What I said there applies equally well to this second count of the indictment.

Finally, with respect to the second count, there is an additional element. In order to constitute the crime under this section, after a person has traveled in interstate commerce to promote and carry on his unlawful scheme or plan, he must perform, or attempt to perform, a further act to promote, facilitate, and carry out that scheme.

In other words, first one has to travel to

promote the scheme, and then one has to do some further

ect to promote the scheme under the statute.

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In this case the government contends that the Further act which Egan committed after he once traveled in interstate commerce to New Jersey to promote this unlewful activity was to share the proceeds of the bribe which allegedly was obtained.

If you find that the evidence before you establishes each essential element of Count 2 beyond a reasonable doubt, you may find the defendant guilty; and if the evidence fails to establish each essential element of Count 2, then you must acquit the defendant.

Now, to support the charge against Mr. Egan on this count, the government contends that the defendant agreed with Aguiluz to drive to Hoboken, New Jersey on the night of November 25th with Valverde and Jara in order to obtain a bribe from Valverde. The bribe payment was allegedly to be made upon the understanding that the police officers would not press charges of narcotics peddling against Valverde.

You will remember the government relies on the testimony by Aguiluz and Jara and Valverde to the effect that Egan and Aguiluz drove to Hoboken where Jara left the ca and went out and got some \$38,000 which was eventually split

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(d) CHARGE TO THE JURY

between the offiers with Egan, according to Aguiluz, receiving some \$17,000.

On this count Mr. Egan readily admits that he drove to Hoboken in a car with these three persons on that evening. However, he states that the purpose of the trip was not to obtain a bribe, that he never eceived the \$17,000 or any sum as a bribe on that or any other occasion.

He testified that Aguiluz urged him to aid in the meeting with a big narcotics dealer known to Valverde. He claims that when he got into the car in Manhattan on that avening he didn't know he was going to New Jersey and was Surprised to find himself in Hoboken.

There are, generally speaking, two types of evidence from which a jury may properly find the truth of a case.

One is direct evidence, such as the testimony of an eyewitness, and the ther is indirect or circumstantial evidence which is the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

Circumstantial evidence is the proof of facts from which you may reasonably infer a material element of

a crime.

(d) CHARGE TO THE JURY

Let's take a simple example to illustrate what is meant by circumstantial evidence.

We'll assume that when you entered the courthouse this morning the sun was shining brightly outside. It was a clear day. There was no rain. Now assume that in this courtroom the blinds are drawn and the drapes are drawn so that you cannot look outside. Assume as you are sitting in this jury box despite the fact it was dry when you entered the building someone walks in with an umbrella dripping water followed in a short time by a fellow wearing a raincoat which is wet. If you vere asked whether it is raining out you cannot say that you know it directly of your own observation, but certainly upon the combination of facts which I have stated to you, even though when you entered the building it was not raining outside, it would be reasonable and logical for you to conclude that it is raining now. That's about all there is to circumstantial evidence.

You may draw such inferences as reason and common sense leads you to draw from facts which you find to have been proven.

Great care must be exercised when drawing inferences from circumstances proved in criminal cases

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1059 (d) CHARGE TO THE JURY and mere suspicions will not warrant a conviction.

However, no greater degree of certainty is required of circumstantial evidence than is required of direct evidence. It is not on any different or lower plane than direct evidence.

The law simply requires that in either case you must be convinced beyond a reasonable doubt of the guilt of the defendant.

In determining the guilt or innocence of a defendant you must decide that question solely from the evidence you heard from the witness stand and the exhibits that have been placed before you.

The summations of counsel which you have heard are not to be considered as evidence but only as arguments to you as to what counsel feel you should find from the evidence. Statements made by counsel in arguing the admissibility of proposed evidence, and colloquies between the Court and counsel with respect to the admission or rejection of such evidence, are not evidence and are not to be considered by you in your deliberations.

In determining the issues in this case it is your recollection of the testimony that is to control and not that of counsel or of the Court.

If during the course of the trial the Court

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(d) CHARGE TO THE JURY

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sustained an objection by one counsel to a question asked by the examining counsel; you are to disregard the question and any alleged facts contained in the question, and you may not speculate as to what the answer would have been.

If a question was asked and an answer given by the witness and I have then stricken the answer from the record, you are to disregard both he question and the answer in your deliberations.

In your search for the truth you must use plain everyday common sense. You must not be governed by sympathy, bias or prejudice. You have seen the witnesses on the stand and observed their manner of giving testimony.

When I refer to witnesses, I of course include the defendant who has testified here.

How did the witnesses impress you? Did they appear to be testifying fairly, frankly and candidly? In ( determining what degree of credibility you should give to a witness' testimony you may consider his conduct, his manner of testifying, and his interest in the outcome of the trial. You should also consider his relationship to the government or the defendant, his bias or impartiality, and any motive he may have to testify falsely.

It does not necessarily follow, of course,

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(d) CHARGE TO THE JURY

that because a person is interested in the result he

is incapable of telling a truthful version of an occurrence.

The defendant John Egan has testified in this case. A

defendant who wishes to testify is a competent witness

and his testimony is to be judged in the same way as that

of any other witness.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit the testimony. Two or more persons witnessing an incident or transaction may see or hear it differently. Innocent misrecollection, like failure of recollection, is not an unusual experience.

In weighing the effect of a discrepancy consider whether it pertains to a matter of importance or to an unimportant detail, and whether the discrepancy results from innocent error or wilful falsehood.

You will recall that certain witnesses were asked about statements which they made under oath prior to this trial, which were claimed to be inconsistent with their testimony at this trial. If a witness on trial affirms under oath the truth of such prior statement the earlier statement may be considered by you both as affirmative of proof of the facts contained therein and as bearing

on the credibility of witness.

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If the prior inconsistent statement was not affirmed at the trial it may be considered by you solely on the question of the witness' credibility and not as affirmative proof of the facts contained in it.

In the light of the importance of the question of credibility here I want to discuss with you briefly some of the elements you should take into account in determining the credibility to be given to the various government witnesses.

You will recall that five former members of the Special Investigating Unit of the New York City Police Department testified for the government. They were Aguiluz, Sottile, Martinez, Rivera, and Stefania.

Martinez, Rivera, Sottile and Stefania have all pleaded guilty to income tax evasion. They are awaiting sentence. Aguiluz is under indictment and intends to plead guilty likewise.

In assessing the credibility of these witnesses you may take into account any hopes they may have that because of their cooperation with the government they might receive lenient treatment for crimes to which they have pleaded or will plead guilty.

I may say that cooperation with the government

is a factor which may be taken into account when it comes to a question of sentencing a person for a crime.

In addition, all these witnesses committed crimes in the course of their occupation as police officers. Aguiluz admitted he dealt in narcotics, had taken bribes, seized money illegally, and engaged in other illegal activities.

Aguiluz, Sottile and Martinez, and Rivera all admitted they perjured themselves on previous occasions.

Of course, the fact that a witness has previously lied under oath can also be taken into account in determining his credibility. All five of them admitted having participated in taking bribes or illegal payments in being a police officer. You should take all these things into account in evaluating the credibility to be given to the testimony of the former members of the SIU.

Jara and Valverde also testified, you will remember, and both admitted they had previously dealt in harcotics and were also participants in some of the illegal acts the government contends occurred here but were never prosecuted.

You should weigh the credibility to be given to the testimony of these witnesses carefully in the light of the standards I have discussed with you. If you

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pgjw 19 (d) CHARGE TO THE JURY 1064
believe that a witness wilfully testified falsely as to

any material fact, you may disregard his testimony all together or you may accept that part of his testimony which you believe worthy of credence. What you accept or reject as credible evidence is for you to determine, but you may not go outside the evidence to speculate as to the facts.

The quality of the testimony of the particular witnesses regardless of who called them rather than the quantity of witnesses is the test to be used in arriving at your decision.

You should consider a witness' entire testimony, his direct examination, his cross examination, and his redirect examination.

You should consider the strength or weakness of his recollection in the light of all the testimony and attendant circumstances in this case.

You may call for any exhibits which you desire to see in conjunction with your deliberations.

You may call for a reading of any portion of the official transcript of the evidence or any portion of this charge.

You are instructed that the question of possible punishment of a defendant in the event of

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(d) CHARGE TO THE JURY

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sense enter into or influence your deliberations. The duty of imposing sentence in the event of a conviction rests exclusively upon the Court. The function of the jury is to weigh the evidence in the case and determine the guilt of innocence of a defendant solely upon the basis of such evidence.

I have sought to avoid any comments which might suggest that I have personal views on that evidence or that I have any opinion as to the guilt of innocence of a defendant. You are not to assume that I have any such views or opinions. This charge is given to you solely to instruct you as to the law applicable to this case.

The action os fht dudge during the trial in granting or denying motions or ruling on objections by rebunsel or in statements to counsel, or in attempting to clearly set forth the law in those instructions, are not to be taken by you as any indication of any determination of the issues of fact. These matters, the actions of the Court, relate to procedure and law.

You, the members of the jury, determine the facts.

There are twelve members of this jury and all of you must agree upon any verdict you reach as to

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the jury room and start your deliberations.

(Time noted: 2:15 P.M.)

d charge

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## (d) CHARGE TO THE JURY

(Time noted: 5:30 - jury present)

THE COURT: Mrs. Henderson, you have notified the Court that the jury is still in the middle of deliberation and unable to agree up to this point and request permission to go home overnight.

I will grant that permission.

Normally we keep you locked up but I will let you go home on two conditions:

(A) That everybody is here tomorrow morning at 9:30; and (b) that you do not discuss this case with anybody between now and tomorrow morning or let anyone discuss it with you. If anybody approaches you with respect to the, I want a report from you the first thing in the morning. If anybody attempts to talk to you about this case I want to know about it.

Under those conditions, I will excuse you until tomorrow morning at 9:30 when you will reassemble in the jury room to continue your deliberations.

Good night.

(Time noted: 5:30 p.m.)

(Jury deliberations adjourned to Friday.

November 1, 1974 at 9:30 a.m.)

1	arjp (e) MINUTES ON SENTENCE.	1
2	UNITED STATES DISTRICT COURT	
3	SOUTHERN DISTRICT OF NEW YORK	
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5	UNITED STATES OF AMERICA, :	
6	Plaintiff, :	
7	vs : 74 CR. 454	
8	JOHN EGAN, :	
9	Defendant. :	
10	x	
11	December 2, 1974	
12	10:00 a.m.	
13	BEFORE:	
14	HON. CHARLES M. METZNER,	
15	District Judge.	
16		
17	APPEARANCES:	
	PAUL J. CURRAN, United States Attorney, For the Government, JOHN GROSS, Assistant United States Attorney	
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19		
20	VICTOR HERWITZ, ESQ.  For the defendant,	
21	22 East 40th Street, New York, N.Y.	
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THE COURT: Mr. Herwitz, you have motions you wish to make which I gather you included in your letter of November 26th?

MR. HERWITZ: Yes, sir. In my letter of November 26th to your Honor, which I understood would be satisfactory I wish to renew the motions I made at the close of the Government's case and at the close of the entire case to dismiss the indictment and acquit the defendant on all of the grounds which I urged at that time.

I also move to set aside the jury's verdict on the ground that it is contrary to the law and not supported by the evidence and also on all the grounds which I urged at the close of the Government's case and at the close of the entire case.

I wish particularly, if your Honor please, to re-emphasize what I previously stated, that the testimony of the Government witnesses in support of the count upon which the defendant was found guilty was so incredible and unbelievable that the evidence does not support the conviction beyond a reasonable doubt.

I won't remake my summation, your Honor, which is a matter of record, but the things I said in connection with the summation I reaffirm now as the basis of my motion in that regard.

Also, I wish particularly to reassert my claim that the defendant was denied a fair trial not by reason of what your Honor did other than in those instances where I objected and you overruled my objection—for the record I am saying that—but he was denied a fair trial, if your Honor please, in violation of the due process of law by reason of the fact that one of the specifications itself which was included in the count upon which he was found guilty was the so-called airport case and on that, your Honor, he was tried in the Eastern District and found not guilty.

I respectfully submit that that constitutes double jeopardy and collateral estoppel. I further respectfully submit that there is something inherently unfair for the Government—and it is the same Government in the Eastern District and in the Southern District—to in effect indict the defendant for a substantive offense in the Eastern District and at the same time have pending in this District an income tax case wherein the same substantive offense is one of the specific items upon which the income tax charge is based.

I think that is so unfair that it violates due process and, for those reasons and all the reasons I heretofore urged upon your Honor, I move to set aside the verdict. I move to dismiss the indictment and I move for an arrest of

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judgment.

(e) MINUTES ON SENTENCE

THE COURT: The motions are denied.

MR. HERWITZ: Respectfully except.

THE COURT: Does the Government have anything to say before the Court imposes sentence?

MR. GROSS: Yes, we do, your Honor.

Your Honor, I have a technical matter. I am sure that the Court is aware of it but it is our understanding that under United States against Slutsky that Mr. Egan can only be sentenced on the 7201 Count and that is up to a maximum of five years because his conviction before Judge Bryan on the 7206(1) which was the false filing, is a lesser included offense. We would ask the Court to sentence Mr. Egan solely on the 7201 Count and to hold open the other count. I have that case if your Honor wants it.

THE COURT: Hold it open how long?

MR. GROSS: Until cert is denied. We don't want it dismissed just in the event there should have to be a retrial.

THE COURT: There is no dismissal. You would have a sentence imposed and it will be a concurrent sentence.

MR. GROSS: I understand that. I don't think that it matters but my reading of the case in any event--THE COURT: Let me see it.

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1	arjp (e) MINUTES ON SENTENCE 5
2	(Handed to Court.)
3	THE COURT: The case speaks about cumulation.
4	I am talking about consecutive or concurrent.
5	MR. GROSS: I understand that, your Honor. My
6	reading of it appears to mean there shouldn't be any sen-
7	tence on the second count, at least as long as the first
8	count is still in force.
9	THE COURT: I assume an appeal is going to be
10	taken in this case.
11	MR. GROSS: Yes, sir.
12	THE COURT: You don't have to commit yourself.
13	I assume one is going to be taken and one from Judge Bryan
14	and the Appellate Court is free to do as it wishes.
15	Concurrent sentences will not violate Slutsky;
16	Slutsky is right, you shouldn't cumulate.
17 .	Anything else you want to say?
18	MR. GROSS: I do, your Honor.
19	May it please the Court, I think we are all in
20	agreement that selling narcotics is an absolutely vicious
21	crime. SIU was created to stop the major drug dealers.
22	Mr. Egan was made its commander. He didn't actually sell

drugs. He certainly abetted the continuation of the drug

SIU and therefore one might conclude he is almost as guilty

trade by allowing corruption and bribery to flourish in

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as the very peddlers who were out on the street whom he was supposed to stop.

He may not have initiated, your Honor, each of the specific acts which your Honor heard at trial but while he was not the initiator of them, he certainly shared in the proceeds of all of the corruption and he allowed SIU to become a den of corruption rather than stopping the corruption and cleaning the place and letting it go on to do what it was constituted to do.

Mr. Egan is a public official and he was--I mean he just betrayed his trust. I don't know how we can expect ordinary citizens to respect the law if we allow a man like Mr. Egan who is the enforcer of the law to commit such a vicious crime and then not sentence him severely, your Honor.

In addition, Mr. Egan is really a white-collar criminal. I don't know how we can expect the other members of our society to respect the law if we have a double standard one standard for white collar people like Mr. Egan and one standard for the poor who don't have the same opportunities that Mr. Egan had.

I think that the feeling against narcotics has been shown in the New York Legislature reaction to dealing with drug dealers. For example, a drug dealer who sells more than an ounce can get 15 years to life. Congress also

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(e) MINUTES ON SENTENCE

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enacted strong drug laws and it would seem to me to be an anathema to let somebody who sells an ounce of a drug go to jail for 15 years and allow Mr. Egan, who lets major drug dealers go, to receive a very light sentence.

Now, my understanding of the purpose of sentence, your Honor, is in part to punish Mr. Egan but secondly it is a deterrent and in this case the effect of deterrents is much stronger than in most cases of ordinary crime because the New York City Police Department is a singular force and because this sentence will be widely published and because other members of the 32,000 members of the New York City Police Department will see what your Honor gives Mr. Egan and I think unless Mr. Egan receives a severe sentence, your Honor, we will have absolutely no deterrent effect on official corruption by New York City Policemen.

Moreover, your Honor, Mr. Egan got at least \$55,000 in graft. If he doesn't receive a strong sentence it is almost as though we were making a crime a profitable operation. When Mr. Egan was commander of SIU the witnesses whom your Honor saw testify didn't allege Aguiluz and Sottile were the only corrupt policemen in SIU.

Your Honor, our investigations have led us to believe that over half of the 60 people in SIU were corrupt. Mr. Egan was the boss of SIU shared the proceeds from the

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(e) MINUTES ON SENTENCE

team of Aguiluz, Novoa, Daly and Sottile and it is our strong belief that he also as boss shared in the proceeds of other operations.

There was evidence presented at the first trial your Honor, for example, Romero testified to a \$21,600 bribe that he paid to Egan and other officers which was a completely separate unit, your Honor, from the Aguiluz, Novoa Daly unit that your Honor heard testify.

Secondly, in the first trial we proffered evidence coming from another unit of policemen called--two of the officers who were going to testify to a bribe they shared in with Mr. Egan and this was a completely separate unit.

Your Honor, the Government believes that Mr.

Egan can in effect crack SIU wide open but we know that he will only cooperate with the Government is he receives a severe sentence.

Turning last to Mr. Egan's perjury at the trial, the Court of Appeals in a recent decision has said that your Honor may extend the time period of a sentence based upon a defendant's perjury. There can be no doubt that Mr. Egan perjured himself.

THE COURT: Mr. Gross, if you want to convict

Mr. Egan for perjury you take him down to grand jury and give

him all the Constitutional protection that he is entitled to

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on a charge of perjury. He has not been convicted of perjury before me. No grand jury found probable cause to indicate he is guilty of perjury and no jury has passed upon the evidence to determine it beyond a reasonable doubt that he is guilty of perjury so don't ask me to impose a sentence on Mr. Egan based on your say-so.

MR. GROSS: Thank you, your Honor. What we will do is ask you to base your sentence on the horrendous acts this man did when he was in SIU and the terrible effect on the public that a light sentence would have. Thank you.

THE COURT: Mr. Herwitz.

MR. HERWITZ: Yes, your Honor.

Your Honor, most lawyers including myself always aspire to be a judge but I must say that if I were a judge in this particular case I wouldn't envy the role of having to impose sentence on a 61 year old man whose life-long record up to this time has been impeccable.

I would like to address myself first to the comment that Mr. Gross has just made.

He asks your Honor to impose a sentence on Mr. Egan on the assumption that he was guilty of bribery and corruption. Just as he has not been convicted of perjury nor been indicted for perjury, he has not been indicted or convicted of either bribery or corruption.

What did this particular jury verdict mean as far as Mr. Egan was concerned and the crime of which they convicted him?

They acquitted Mr. Egan on the substantive travel count from which I think we must conclude that they did not include in the four specific items in the income tax case the alleged \$15 or \$17,000 which it was claimed Mr. Egan had received and failed to declare out of the Hoboken transaction.

Now, that left three specific items but the jury's verdict did not mean that they found that Mr. Egan had obtained money in those specific, three specific items, nor did the jury's verdict find or imply that he had failed to declare with intent to evade moneys obtained from those three specific items.

The most that this jury's verdict implies is that they found, as your Honor charged them they could find, that during the year 1970 he had had a substantial income in excess of what he declared and that he failed to declare that income and pay the tax on it with intent to evade.

Your Honor made it very clear during your charge to the jury that what constituted a substantial excess income, undeclared income, was not something that your Honor could tell them specifically; that they had to judge it for themselves and they had to decide it on the basis of total

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income. So that the jury's verdict in this case only implies not just technically but actually, only implies that they found that in at least one of these three incidents Mr. Egan had received money in a substantial amount and failed to declare it.

I respectfully submit that since the jury's verdict doesn't imply anything more than that, and as far as I know none of us spoke to any member of the jury to find out what the jury's verdict actually did mean, that Mr. Egan should be sentenced by your Honor only insofar as that jury verdict implies he was found guilty.

Now, taking these three specific items, one of these items is the item of \$15 or \$17,000 which, according to Aguiluz, he gave Mr. Egan in the Holiday Inn on or about May 11, 1970. Your Honor, that was the specific charge in the civil life and other terms upon which Mr. Egan was tried in the Eastern District and acquitted.

There was a new trial on that very issue. Now, for technical reasons of necessity, I raised the question of venue and because I raised the question of venue for technical reasons that may not have been res judicata, it may not have been collateral estoppel and it may not have been double jeopardy. But as actual facts, your Honor, and this is a matter of public knowledge, when the jury came

back the Eastern District I didn't question them. I never question a jury. But they were questioned by reporters and it was reported that that not guilty decision in Brooklyn was not based on venue, it was based on their finding that the evidence was insufficient to convince them of Mr. Egan's quilt on that count.

So that if your Honor--you are not bound by the decision from a legal point of view but from the point of view of sentencing, your Honor, I respectfully submit that you certainly should not assume that this jury found Mr. Egan guilty on the basis of that count.

Let us take the so-called 93rd Street count involving Sottile. Again if this were a legal argument I couldn't make it but since on the question of sentence hearsay and supposition, if founded on some reason, is admissible.

When this case is tried before Judge Bryan, the jury was out for more than two days and they sent about 37 questions to Judge Bryan. Now, one of the questions they sent to Judge Bryan I think clearly indicates that the previous jury that tried this case were in agreement on one thing, that Mr. Egan was not guilty on that 93rd Street Sottile matter. And why do I say that?

At one point in the deliberations by the jury, your Honor, they asked to be supplied with the bank deposit

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(e) MINUTES ON SENTENCE record for the various items such as the Taft Hotel item, the airport item, the Hoboken item. They did not ask to be supplied with the bank deposit following September 23rd, which was the date of the 93rd Street item. They specifically excluded that.

THE COURT: Mr. Herwitz, I really can't buy that because my experience with jury is that they ask questions and really have no relation to guilt or innocence and are no indication of what is in their minds. They may have been convinced on that one way or the other or were not interested. The mere fact that the jury requests some information cannot be interpreted by anybody. You have been around a long time to know that they can ask a question which looks for acquittal and find it comes back with a unanimous verdict of conviction.

MR. HERWITZ: I know that, your Honor. But if they had been agreed on that they would have convicted him on that count. What I am saying -- I am not saying that any of this is positive, of course not.

What I am saying is, your Honor, that in sentencing Mr. Egan naturally it is not only the income tax violation but from what it arose that your Honor will take into consideration.

I certainly say to your Honor that you cannot

assume that this jury were convinced unanimously beyond a reasonable doubt that Mr. Egan was involved in that matter. What I am getting at is they could have based their determination merely on the one item involving the \$8,000 Laguza Taft Hotel item and there is no way your Honor can read into this decision of the jury that they found anything more than that.

I respectfully submit that on that basis the sentence of Mr. Egan on the assumption that that is what they found or on the assumption no greater than that.

Mr. Gross says that Mr. Egan was found guilty of corruption and bribery. I have here, your Honor, a batch of indictments returned in the Eastern District and Southern District of New York. One of these indictments, your Honor, if they had been tried, would have given the Government the opportunity to prove if they felt they could prove that Mr. Egan was guilty of bribery or corruption because every one of these indictments alleges a specific item so that the Taft Hotel is a specific item; the McAlpin Hotel is a specific item; the airport case was a specific item; the Hoboken case was a specific item; the Olate case was a specific item, and the Government shows—I didn't choose your Honor—the Government chose not to try those cases.

Since the Government chose to dismiss those cases and instead try Mr. Egan on income tax, I respectfully submit that morally and equitably and legally they are a step from coming into Court asking Mr. Egan to be sentenced as though they had tried him on indictments which they decided they didn't want to try him on.

Now the fact of the matter is that none of these three specific items resulted in the improper release of anybody charged with narcotics. For example--

THE COURT: Pardon me, Mr. Herwitz, you are not going to say it's all right to take the bribe if you thereafter prosecute the person?

MR. HERWITZ: I beg your pardon, your Honor?

THE COURT: I think your argument is leading you down a bad corner. What you are saying is it is all right to take the bribe as long as thereafter you prosecute the individual who gave the money.

MR. HERWITZ: I didn't say that.

THE COURT: That's where you seem to be leading.

MR. HERWITZ: No, sir, that is not it. But Mr. Gross said that as a result of this narcotics peddlers were let loose and the laws with respect to them were not enforced. I am only addressing myself to that.

Certainly I don't urge, your Honor, and do not

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say that accepting gratuities or bribes under any circumstances is proper. However, in none of these cases is there any claim that Mr. Egan as a result of what he allegedly received, failed to perform his actual duties. Is it a question of degree, your Honor. I am not justifying the acceptance of money under any circumstances.

If your Honor please, aside from the nature of the crimes involved, I think something ought to be said, and I think it is important, as to the motivation for the commission of these crimes, and I am assuming as I must for the purposes of this sentence, that the verdict of the jury was correct. I will assume that this is not a case, your Honor, where a man who had previously led a life of corruption was finally caught up with.

This is a case of a man whose conduct was as close to saint-like as anyone could imagine. Here is a man who had more and more of his share of sickness and troubles than any of us should expect to be subjected to.

For the past 30 years as your Honor knows, and I am not saying this from something I know and your Honor doesn't know, the past 30 years he had sickness in his family which we all know is about the worst sickness that can afflict anybody. He had a mentally ill wife for 30 years.

Now, because he did have that misfortune, that in itself is not a ground for your Honor exercising leniency. But as your Honor I am sure saw from the hospital records from Rockland State Hospital which your Honor knows were not prepared for purposes of this trial or for the purposes of this sentence, this man for 30 years devoted himself, night and day, to the care of this mentally sick but as it appears in the hospital records, charming and lovely woman.

The burden of bringing up two children fell on him. He discharged that burden without ever I am sure considering it a burden, your Honor. Not having been afflicted enough with that, what was his family situation in 1969 and 1970 at the very time, your Honor, that these alleged acts are claimed to have been committed?

In the entire year of 1969, and I don't know whether you know this, I don't think you do, in the entire year 1969, his son-in-law, the husband of his daughter who lives with him, was intermittently at home and in the hospital with a disease of one of his legs and the expectation was that he would be a cripple for life and that he would never be able to be returned as a member of the police force and that his pension from the police force would have been virtually nothing because he then only had three years in the department.

That was what was in the house in 1969, and it

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carried over to 1970 when it was still doubtful whether Mr. Rogers would be able to continue as a member of the police force.

In 1964, Mr. Egan's second and third grand-children were born, twins. One of them was born with a brain disease and one of them was born with a hip disease, your Honor.

During 1969 and 1970, the one who was born with the brain disease had to be watched every minute of the time, had to wear a helmet all the time and when he went to sleep he had to take the helmet off and tie him so he wouldn't touch his head.

Now, Mr. Egan was involved in this, closely involved in this. He brought up this daughter really, your Honor, having a sick wife--he had to be involved in this and he had to be concerned with this.

And in the same year of 1969 and 1970, the other twin it was discovered had a hip injury with the result that this child was unable to walk and had numerous operations since.

Now if Mr. Egan did as the jury found take the money in 1970 and if, as the jury found he did not declare his income tax, your Honor, he didn't do it in order to have a high life and didn't do it in order to have vacations

99a 1 arjp (e) MINUTES ON SENTENCE 2 in Acapulco as Aguiluz was allegedly interested in. The man hasn't had a vacation in 30 years. If in 1970 he was con-3 cerned about the financial welfare of his family, and if because of that he departed from the habits of a lifetime, 5 6 your Honor, this is understandable -- not excusable but under-7 standable. 8 Certainly by any sentence that your Honor imposes, 9 the objective couldn't be rehabilitation of Mr. Egan because 10 they fine a man based on his whole life, couldn't be found. 11 If by your sentence of Mr. Egan you feel that 12 an example should be made, let me call to your mind that 13 there are many persons as to whom examples could be made. 14 Is Mr. Egan such a person? Is he a white-collar criminal? 15 Is a criminal really excepting so far as this conviction 16 indicates? 17 Your Honor, if Mr. Egan's life were in jeopardy 18 by any sentence that you would impose I am sure that you 19 would take that into consideration. The lives and welfare 20 of his wife and grandchildren are in jeopardy by whatever 21 your Honor might do. Mr. Egan has had as much travail as 22 any man in this life can have. I wouldn't say there is no-23 thing that your Honor can do that could add to it -- there is.

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For all the good that he has done in his life, for all the decency that he had shown in his life, for all

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the devotion and loyalty over and beyond, doesn't that outweigh what he has done here?

Thank you.

THE COURT: Mr. Egan, do you have anything to say before the Court imposes sentence?

THE DEFENDANT: I really don't have anything more, your Honor to add to what Mr. Herwitz said. Maybe I could be a little bit more specific and as he said, for 30 years I have lived through this travail of my wife. I brought up my two children in that manner and for the last ll years these two disabled grandchildren of mine. The first one, he had to have the top of his head taken off with osceomyelitis and after a period of a couple of years in the hospital, they took his ribs and transplanted them, made a skull for him and from what I understand my daughter told by the surgeon that the operation was the only second successful operation in the country where they could do this. Usually it is a steel plate and everything else like that but he will never be able to play, carry on as other children have and four years ago, in 1970, the older child had a disease that went from one hip to the other and I have done nothing but day and night when he was completely laid out on the table, bringing him home to his home, to his handicap school where he was taught on a hospital stretcher

arjp (e) MINUTES ON SENTENCE

and that has been my life for 30 years and for the last 11 it has been in addition. I don't think I could say much more, your Honor.

MR. HERWITZ: Your Honor, just one more thing.

During the trial before Judge Bryan we offered
to plead guilty to this count and the Government rejected
the offer.

THE COURT: What has that got to do with it?

MR. HERWITZ: Well, with some judges it might have something to do.

THE COURT: It has absolutely nothing to do with me. Whatever you try to do with the Government is your private business and I am not involved in that in any manner, shape or form, Mr. Herwitz.

MR. HERWITZ: That was before Judge Bryan.

THE COURT: I am sorry. I don't care who was before Judge Bryan. I don't recognize deals or attempted deals or plea bargaining. That is between the Government and the defendant. I impose sentence as I say after hearing the evidence.

The Government knows it couldn't come before me and make any suggestion concerning sentence. That is why I was particularly upset by Mr. Gross' remarks about perjury. I don't care what the Court of Appeals said. You

(e) MINUTES OF SENTENCE

can't wipe out the Constitutional rights of a person by

saying because I sit here and hear some evidence which I think may be perjurious I should therefore sock a defendant some extra years in jail.

He is entitled to be found by a grand jury to

He is entitled to be found by a grand jury to have committed a crime and entitled to the protection of having the jury unanimously find him beyond a reasonable doubt guilty of that crime.

You are standing up here and asking me to do that was completely unfair and wrong. I dressed down assistants before for doing that and please bring word back to your organization again and never do it here. Actually that sort of attitude of tearing down the Constitutional protection is no different from what this defendant has done.

We have a set of values and standards and we try to maintain them and what you are asking me to do is no better and no worse than what Mr. Egan has done, you can wipe it away like that.

Just because you think he committed perjury and you try to convince me that he did therefore I ought to give an additional sentence to what I would normally impose. I hope that never happens to you, Mr. Gross.

Mr. Egan, these times when the whole structure

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(e) MINUTES OF SENTENCE

of our society is being attacked and when our standards are being torn down, and when young people have to look to something to hold onto, you have violated a sacred trust imposed upon you. Of course, your conviction here of income tax evasion. It is perfectly possible, and I think true, not even possible, the source of those funds came from shaking down criminals.

argument made that these funds accumulated from unreported income in prior years. The jury may have exercised its right to show compassion. We see that every day in the week in the Courtroom. Instead of convicting on the interstate trial for bribery they thought conviction for income tax was sufficient and that's their right, they can do that.

We respect them.

The underlying fact in this case, however, shows a particular heinous crime being perpetrated. If it weren't for your personal problems at home, which have been detailed by Mr. Herwitz and which I read in the pre-sentence report, I wouldn't hesitate to impose a maximum sentence under this count.

Because of those problems, and they have some bearing perhaps because of the need for your family, in the future, I will sentence you under Section 4208(a)(1) to a

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Honor.

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(e) MINUTES OF SENTENCE

term of two and a half years with the parole eligibility date of eight months. Your release at that time, of course, is solely within your power and your performance within the confines of the incarceration imposed and the evaluation by the parole board.

As to the second count on which you were convicted before Judge Bryan, which I think is a 7206 subdivision
l count, I will impose a sentence of one year to run concurrently with the sentence imposed on the tax evasion count.

I assume the Government has no objection to the continuance of bail pending appeal?

MR. GROSS: Put that way, your Honor, we do not.
MR. HERWITZ: We intend to take an appeal, your

THE COURT: Then I don't have to give you words of the defendant's rights to appeal here.

MR. HERWITZ: No, sir.

THE COURT: All right.

105a
RELEVANT PORTIONS OF TRIAL TRANSCRIPT IN THE TRIAL OF 74 CR. 312 AND 74 CR. 348 BEFORE JUDGE WEINSTEIN (a) CHARGE TO THE JURY. 721
Four, a person who has comitted perjury must have
his testimony even more carefully considered.
MR. HERWITZ: No. 5 you have charged.
THE COURT: Yes. Five I have charged.
I have charged as to accomplice and I can say the
testimony of an accomplice or informer
MR. KAPLAN: Your Honor, I would ask if you give
that charge to supplement that with the Coriello charge.
THE COURT: No.
Your request No. 7 is not in accordance with the
Second Circuit laws as I understand it.
Do you want to make your motions now or do you want
to wait until after the charge?
Will the Marshall ask the jury to come in?
(The jury took its place in the jury box.)
THE COURT: Now, ladies and gentlemen, I am going
to tell you what the law is and I want you to follow
my instructions.
You and you alone will decide the facts and apply
the law to the facts as you find them.
I have no view as to the guilt or innocence of
this defendant. If anything I have said or done should
indicate to you any such view put it out of your mini.
My sole function here and all that I want to do is insure

this defendant gets a scrupulously fair trial in

(a) CHARGE TO THE JURY accordance with the law. You will decide the case solely on the evidence you have heard here.

The fact that the prosecution is brought in the name of the United States is of no concern to you. All parties -- Government and individuals -- are equal before this Court and nobody is entitled to any sympathy or favor.

There has been talk about indictments and grand jury proceedings. An indictment is an accusation in writing. It is not evidence of guilt and is entitled to no weight whatsoever in your deliberations except as you may assess the credibility of the witnesses.

This defendant has pleaded not guilty. That means the Government has the burden of proving guilt beyond a reasonable doubt with respect to each element of the crimes he is charged with committing. This burden never shifts throughout the trial. A defendant does not have to prove his innocence. He does not have to submit any evidence at all.

He need not take the witness stand and you may draw no infernece unfavorable to him because he does not take the witness stand.

A defendant is presumed to be innocent. A presumption of innocence remains with the defendant throughout the trial and must be considered by you in your deliberations.

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(a) CHARGE TO THE JURY A reasonable doubt means a doubt sufficient to cause a prudent person to hesitate to act in the most important affairs of his life. Reasonable doubt may result from the evidence produced or from failure to produce evidence.

Finding an individual to be guilty of committing a felony and subjecting him to criminal penalties is most serious and you will consider this fact in deciding whether you have a reasonable doubt. Nevertheless, if at the end of the trial you are convinced beyond a reasonable doubt that a defendant is guilty of a crime charged, then you should find him guilty of that crime.

It must be established beyond a reasonable doubt that a defendant acted willfully and knowingly before he may be found guilty of a crime.

An act is willfull and knowing if it is done intentionally, deliberately, and voluntarily, with the specific intent to accomplish something the law forbids -that is to say, with the bad purpose to disobey or disregard the law.

An act is not knowing if it is committed because of a mistake, carelessness, negligence, stupidity, or some other non-criminal reason.

The state of mind of this defendant is important and it must be inferred from the circumstances as revealed by the evidence and as is interpreted by you in the light

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(a) CHARGE TO THE JURY of your general experience as people of affairs.

Although I have told you that each element of the crime must be proven beyond a reasonable doubt there is one element that you must find that is somewhat different and that deals with the question of venue.

The indictment alleges that each of the crimes charged took place in part in the Eastern District of New York. That is why we are trying this case here in the United States District Court for the Eastern District of New York. Under Federal Law a defendant has a right to be tried in the District wherein the crime with which he is charged was allegedly committed, at least in part. The Eastern District of New York includes Brooklyn, Queens and Nassau County, all of which figured in the testimony in this case. You must find that some part of the events constituting the crime charged in the indictment took place in the Eastern District of New York. And you must find that before you may find the defendant guilty of the crime he is charged with committing. It is not necessary that you find that John Egan personally was present in the Eastern District because, if you find that he was a part of a conspiracy charged, then Mr. Egan is responsible for any acts committed in furtherance of that conspiracy, wherever they are committed and even if they are committed before Mr. Egan joined the conspiracy.

(a) CHARGE TO THE JURY

theacts committed in the Eastern District of New York
must have been committed at or after the beginning of
the conspiracy. It is the defendant's theory that, if
there was a conspiracy, it was entered into after everyone left the Eastern District on the night of May 11.

THE COURT: (Continuing) And that the conspiracy charged was terminated on May 12 before anybody re-entered the Eastern District on way to and into Nassau County.

The Government's position is exactly to the contrary on those points.

Now, as to this issue of venue. It is necessary only that you be convinced by the preponderance of the evidence, not that you be convinced beyond a reasonable doubt that a crime charged was committed in the Eastern District of New York. If you do not find by the preponderance of the evidence that that is so, then you must acquit the defendant of that crime and you needn't consider all of the other issues and the details of the crime.

that the crime charged was considered in the Eastern
District of New York, then you must go on and consider
the specifics of that crime and as to the specifics of
the crime you have to find that beyond a reasonable doubt.
Proof by a preponderance of the evidence may mean proof
which leads you to find that the existence may be
contested that is more probable than its non-existence.

I know that that may be somewhat confusing, but I think it is a simple enough concept. Venue must be proved by the proponderance of the evidence, which is a lesser degree of proof than beyond a reasonable doubt.

# (a) CHARGE TO THE JURY

The elements of the crime I am about to describe to you must be proved beyond a reasonable doubt. Is that clear? But first you have to find by the preponderance whether some part of the crime was committed here in the Eastern District, in Queens, at Kennedy, or in Brooklyn on the way to New York or the next day on the way to Nassau driving through Brooklyn and Queens and into Nassau.

Now, the indictment charges three distinct crimes or counts. You must consider each count separately and in effect you are trying three separate cases at once.

Each one of them must be considered separately by you.

As to each one you will be asked whether you find the defendant guilty or not guilty. The exact amounts and times in the indictment are no decisive as long as they are substantially correct. That is to say, if you should find the defendant was involved in a conspiracy to steal \$76,000, rather than \$180,000 you could still find him guilty. That is not the decisive element as I will describe to you. That may be a consideration for you in determining whether or not the witnesses were lying.

The first count charges as follows:

"John Egan, the defendant, and Joseph Novoa, Peter Daly, Gabriel Stefania, Charles Worster and Carl Aguiluz, named herein as co-conspirators, but not as defendants,

(a) CHARGE TO THE JURY at all times relevant herein, were policemen assigned to the Dureau of Narcotics, Special Investigations Unit of the New York City Police Department.

"The Internal Revenue Service, at all times relevant herein, was an agency of the United States Treasury Department charged with assessing and collecting taxes due to the United States and investigating violations of the tax laws of the United States.

"Regulations of the New York City Police Department required, at all times relevant herein, that seizures from the defendants of currency exceeding \$1,000 in connection with arrests be reported to the Internal Revenue Service.

"From on or about April 30th, 1970, up to and including the date of the filing of this indictment, in the Eastern District of New York and elsewhere, John Egan, the defendant, and Peter Daly, Joseph Tovoa, Gabriel Stefania, CHarles Worster, and Carl Aquiluz, named herein as co-conspirators, but not as defendants, villfully, knowingly and unlawfully did combine, conspire, confederate and agree together and with each other to defraud the United States and its departments and adencies in connection with the performance of their Governmental functions, by obstructing and hindering the Internal Revenue Service in the ascertainment and collection of

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(a) CHARGE TO THE JURY 723 information used in assessing and collecting taxes and investigating violations of the tax laws of the United States.

"It was part of said conspiracy that the defendants and co-conspirators would arrest Louis Torres, Wladimir Bandera and others and in connection with said arrests would seize and divide among themselves approximately \$230,000 in United States currency without reporting the true amount of said seizure to the New York City Police Department or the Internal Revenue Service, thereby obstructing and hindering the Internal Revenue Service in the ascertainment and collection of information used in assessing and collecting taxes, and in investigating violations of the tax laws of the United States.

"It was further a part of said consoiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities."

As overt acts: "In furtherance of, and to effect the objects of the said conspiracy, the defendants committed the following overt acts, among others, in the Pastern District of New York and elsewhere;

"One, on or about May 11, 1970, co-conspirator Daly placed a telephone call from John F. Kennedy International Airport, Tueens, New York, to the Holiday Inn on West

(a) CHARGE TO THE JURY 57th Street, New York, New York.

"Two, on or about May 11, 1970, defendant Egan and co-conspirators Daly, Novoa, Stefania, Worster and Aguiluz met at the Holiday Inn on West 57th Street, New York, New York."

That is the end of that count as charged in the indictment.

Now, I will tell you in a few minutes about overt acts, but let me tell you that this count charges a violation of Section 371 of the United States Code, Tile 18, and that reads in part as follows:

"If two or more persons conspire to defraud the United States, or any agency thereof, in any manner or for any purpose, and one or more of such persons do any act to affect the object of the conspiracy, each shall be quilty of a crime."

when you analyze the charges in light of that statute, you will find that there are four elements that the Government must prove beyond a reasonable doubt.

That is after you get over the venue point, if you do.

First, that there were two or more persons involved. A person cannot enter into a conspiracy with himself. In this case, you will recall, it is charged that the co-conspirators included five persons who were not named as defendants, Peter Daly, Joseph Moyoa, Cabriel Stefania,

(a) CHARGE TO THE JURY Charles Worster and Carl Aquiluz.

Second, that two or more persons willfully and knowingly conspired were agreed. I told you what willfully
and knowingly is.

Third, that they conspired or agreed to commit the unlawful acts charged in count one to defraud the United States.

Fourth, that one of the members of the conspiracy knowingly committed an overt act in furtherance of the conspiracy.

If you find that there was no agreement among any of the co-conspirators mentioned in count one, you may not find a conspiracy existed. Thus, you must first consider whether there was a willful and knowing agreement.

In order to find such an agreement, it is not necessary that you find that the persons charged met together and entered into an express or formal agreement, or that they stated orally or in writing what the scheme was and how it was to be achieved. It is sufficient to show that they care to a mutual understanding to accomplish the unlawful set.

conspiracy, the evidence sust show beyond a reasonable doubt that the committeey was browingly formed and that

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731 (a) CHARGE TO THE JURY the defendant willfully participated in the unlawful plan, with the intent to advance or further some object of purpose of the conspiracy -- that object here having to be to defraud the United States.

The agreement may be inferred from the circumstances and the conduct of the parties as revealed by the evidence. More direct evidence that this is usually not available, since a conspiracy is ordinarily characterized by secrecy. Nevertheless, suspicion cannot be a substitute for evidence and mere similarity of conduct does not establish a conspiracy.

// To be a member of a conspiracy the defendant need , not know all of the details of a conspiracy, nor all the parties to it, nor all of the means by which the objects were to be accomplished. Dach member of the conspiracy may perform separate and distinct acts. It is necessary, however, that the Government approve beyond a reasonable doubt a defendant was aware of the common purpose, and that the common purpose was criminal in nature and that this defendant was a willing and knowing participant with the intent to advance the purposes of the conspiracy.

You may find the defendant quilty of a conspiracy if the Government proved beyond a reasonable doubt that the defendant entered the ongoing conspiracy not knowing that it was a continuing conspiracy and that the four

(a) CHARGE TO THE JURY elements were present. To be quilty of a conspiracy, a defendant need not be a party to the conspiracy from the beginning — from its inception, so long as the elements of the crime are proved beyond a reasonable doubt. That is, you can join it or leave it at any time. //

The third element the Government must prove beyond a reasonable doubt is that an object of the conspiracy was to defraud the United States. A conspiracy to defraud the United States encompasses not only conspiracies that might involve loss of Government funds, but also any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government.

The mere failure to disclose the financial proceeds of a criminal enterprise to the Internal Revenue Service without more is not enough to sustain the charge of conspiring to defraud the United States.

The mere violation by a New York City Police Officer of a rule or regulation of the Department does not constitute a violation of any Federal law or in of itself justify conviction of the defendant under count one. But the Government argues that this regulation on the defendant's position in the Department, together with the other evidence in the case, does show guilt of count one.

If you find boyond a reasonable doubt that the

(a) CHARGE TO THE JURY defendant was aware of the Police Department's regulation that confiscation of money totalling over \$1,000 be reported to the Internal Revenue Service, and that the defendant willfully conspired to disobey this regulation in order to impair the investigative function of the Internal Revenue Service, then you may find that an object of the conspiracy was to defraud the United States.

You may consider as possible reasons why conspirators such as this — if you find there was such a conspiracy — might wish to keep information from the Internal Revenue Service, the avoidance of their own Federal Income Taxes, from money abtained from criminal victims or avoidance of a possible investigation by other agencies of the FEderal Government alerted by the Internal Revenue Service which might then investigate wrongdoing on the part of the conspirators. The defendant denies any such intention and also denies being a member of any conspiracy or attempt to take money or share in money taken from the Chileans in this case.

I mentioned the overt acts.

Under the applicable law a individual may not be convicted of a conspiracy if no overt act is committed in furtherance of the conspiracy. It is not enough under our law for somebody to just agree to do a criminal act, unless something is actually done. The overt acts which

the Government must prove beyond a reasonable doubt need not in themselves be unlawful. Of course, the object of the conspiracy must be unlawful or there is no conspiracy as I have already described it to you. I have read to you the overt acts charged in the indictment under the conspiracy count. Unless you find beyond a reasonable doubt that one or more of the defendants committed one of the overt acts charged, and that it was done in furtherance of the conspiracy and with knowledge that the conspiracy existed, you must acquit the defendant of the conspiracy count.

The overt act must be committed after the conspiracy commences and before it ends and in furtherance of the conspiracy.

Since intent and purpose are states of mind and it is not possible to look into a man's or woman's mind to find out what went on, the only way you have of arriving at the intent and purpose of the defendant in this case is for you to take into consideration all of the facts and circumstances shown by the evidence, including the exhibits, and determine from all such facts and circumstances what the intent of the defendants was at the time in question. Thus, direct proof of willingness or wrongful intent or knowledge is not necessary. Intent and knowledge may be inferred from acts and such

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(a) CHARGE TO THE JURY inferences may arise from a combination of acts, as though each act standing by itself may seem unimportant.

In other words, you have to put all of these things together and draw reasonable inferences based upon your experience as mature people. || So much for the first charge.

Now, count two charges as follows, and I will quote again from the indictment:

"John Egan, the defendant, and Peter Daly, Joseph Novoa, Gabriel Stefania, Charles Worster and Carl Aguiluz, named in here as co-conspirators but not as defendants, at all times relevant herein, were policemen assigned to the Bureau of Marcotics, Special Investigations Unit, of the New York City Police Department, acting under color of law of the State of New York.

"Louis Torres, Wladimir Bandera, Lillian Torres,
Jorge Martinez Diaz, Guillermo Servedra, John Doe, also
known as 'Lito' and John Doe, also known as 'El Tio',
at all times relevant herein were inhabitants of the
State of New York."

The fifth and fourteenth amendments of the Constitution of the United States of America, at all times relevant herein, provided that no person shall be deprived of life, liberty and property without due process of law.

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# (a) CHARGE TO THE JURY

"The Fourth Amendment to the Constitution of the United States of America, at all times relevant herein, provided that the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated."

I continue to quote, "On or about and between the first day of May, 1970, and the thirteenth day of May, 1970, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, John Egan, the defendant, together with Peter Daly, Joseph Novoa, Gabriel Stefania, Charles Worster and Carl Aguiluz, named herein as co-conspirators but not as defendants, willfully, knowingly and unlawfully did combine, conspire, confederate and agree to get together and with each other to violate Section 242 of Title 18 of the United States Code.

"It was part of said conspiracy that the defendants and co-conspirators willfully, knowingly and unlawfully would use their authority as police officers to conduct electronic surveillance of Guillermo Servedra at the New York Hilton Hotel in New York, New York, thereby depriving the aforesaid Guillermo Servedra of a right secured and protected by the Fourth Amendment to the Constitution of the United States, namely the right to be secure against unreasonable searches and seizures.

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"It was further a part of said conspiracy that the defendants and co-conspirators willfully, knowingly and unlawfully would use their authority as police officers to take, extract and appropriate to themselves approximately \$230,000 from Louis Torres, Wladimir Bandera, Lillian Torres, Jorge Martinez Diaz, Guillermo Servedra, John Doe, also known as 'Lito', and John Doe, also known as 'El Tio', thereby depriving the aforesaid individuals of a right secured and protected by the Fifth and Fourteenth Amendments to the Constitution of the United States, namely, the right not to be deprived of property without due process of law.

"It was further a part of said conspiracy that the defendants and co-conspirators willfully, knowingly and unlawfully would use their authority as police officers to arrest Wladimir Bandera, Lillian Torres, John Doe, also known as 'Lito' and John Doe, also known as 'El Tio' and hold the aforesaid individuals in custody at the Holiday' Inn in New York, thereby depriving the aforesaid individuals of a right secured and protected by the Fifth and Fourteenth Amendments of the Constitution of the United States, namely the right not to be deprived of liberty without a due process of Law.

"It was further a part of said conspiracy that the defendant and co-conspirators would conceal the existence

(a) CHARGE TO THE JURY of the conspiracy and would take steps designed to prevent the disclosure of their activities.

"In furtherance of the conspiracy and to affect the objects thereof, the following overt acts, among others, were committed in the Dastern District of New York and elsewhere:

"One, on or about May 11, 1970, the defendant Daly placed a telephone call from John F. Kennedy International Airport, Queens, New York, to the Woliday Inn on West 57th Street in New York City.

"Two, on or about May 11, 1970, the defendant Egan and co-conspirators Navoa, Stefania, Worster, Aguiluz and Daly met at the Moliday Inn on West 57th Street, New York City."

Now, Count Two charges a violation of Section 371, Title 18 of the United States Code. I have already read-to you in connection with Count One the defrauding the United States aspect of that section and now I will read you the other portion of Section 371.

It reads, and I quote, "If two or more persons conspire to commit any offense against the United States and one or more persons do any act to affect the object of the conspiracy, each shall be quilty of a crime."

Under Count Two the defendant is charged with conspiring to deprive certain individuals of their rights

(a) CHARGE TO THE JURY under the United States Constitution and the laws of the United States, in violation of Section 242, Title 18 of the United States Code.

In order to find the defendant quilty of Count Two, you must find the Government proved each of four elements beyond a reasonable doubt. I have already listed these four elements for you in connection with Count Cne. I . won't repeat all of them here. There is one important difference, however, under Count Two the Government must prove, as the third element, that an object of the conspiracy was to deprive certain individuals named in the indictment of one of their rights under the United States Constitution or the laws of the United States -- namely, their right not to be subjected to an illegal wire tap or their right no to be deprived of personal liberty by means of an unlawful detention or their right not to be deprived of property without due process of law. It is enough if you find beyond a reasonable doubt that one of these ennumerated rights was intended to be violated. You do not have to find all of them violated, as long as one of the constitutional r. hts were violated that suffices under this count.

Now, in addition to the four conspiracy elements already ennumerated, they have to conspire to act under color of law.

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(a) CHARGE TO THE JURY

Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken "under color of law."

If you find beyond a reasonable doubt that the defendant, John Egan, conspired to abuse the power he possessed as a policeman to wiretap or to detain individuals named in the indictment, or to confiscate their money, then you may find that he conspired to act under color of law.

If you find that the conspiracy between or among Aguiluz, Novoa, and Daly to use illegal, electronic equipment was for the purpose of getting information in the due performance of their duties and that they and they alone so conspired, then you may not find the defendant guilty on that ground unless the defendant willingly and knowingly became a member of the conspiracy after it started.

If Benderra and others at the Holiday Inn willingly acquiesced, without any coercion expressed or implied, in being held at the Holiday Inn they waived their constitutional rights to be released, and you may not find the defendant guilty on that ground.

There is, of course, the further ground of depriving people of their property without due process. Any one

(a) CHARGE TO THE JURY of these three suffices, as I say.

Now, let me get to Count Three. Those first two counts are conspiracy counts. Count Three is a substantive count and it reads as follows:

There is an introduction which is much like the introduction to Count Two, that is, that Egan and the other patrolmen were assigned to the Bureau of Narcotics, that Torres and the others were inhabitants of the City of New York, that no person shall be deprived of life, liberty and property without due process of law, and that the Fourth Amendment provided the right of people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.

The essence of the count is as follows:

"On or about the 11the day of May, 1970, within the Eastern District of New York, John Egan, the defendant, Peter Daly and Joseph Novoa, Charles Worster, Gabriel Stefania and Carl Aguiluz, named herein as co-conspirators but not as defendants, willfully, knowingly and unlawfully did take, extract and appropriate to themselves approximately \$230,000 from Louis Torres, Wladimir Bandera, Lillian Torres, Jorge Martinez Diaz, Guillerma Servedra, John Doe, also known as 'Lite', and John Doe, also known as 'El Tio', thereby depriving the aforesaid individuals of a right secured and protected by the Pifth and the

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(a) CHARGE TO THE JURY
Fourteenth Amendments to the Constitution of the United
States, namely, the right not to be deprived of property
without due process of law."

The Second Count charges a conspiracy to do it, the Third Count charges that they did this.

This Count charges a violation of section 242 and 2 of Title 18 of the United States Code. I am going to read you that section.

"Whoever, under color of any law, statute, ordnance, regulation, or custom, willfully subjects any inhabitant of any State, Territory or District to the deprivation of any rights, privileges or immunities secured or protected by the Constitution of the United States is guilty of a crime."

(Continued next page.)

#### (a) CHARGE TO THE JURY

Now, in order to find the defendant guilty of this Third Count you have to find four elements.

First, that the defendant, or someone with whom he was acting in concert, deprived someone of a right secured by the United States Constitution or the laws of the United States.

Second, that the deprivation was committed under color of law.

Third, that the person or persons deprived were inhabitants of a state territory or dictrict of the United States.

A person living in a hotel in New York City is an inhabitant of the United States, even though he is not a citizen he remains an inhabitant until he leaves the country, and he is entitled to the protection of the Constitution of the United States.

Fourth, that the defendant acted willfully.

I have already discussed that concept with you and I have already discussed the concept of "under color of law" with you.

If you find beyond a reasonable doubt that the defendar or someone with who he was acting in concert kept money from the persons named in the indictment for personal, unlawful financial gain, then you may find that the defendant is guilty of depriving an individual or property without the due process of law — a right secured by the Fifth and Fourteenth Amend—

(a) CHARGE TO THE JURY ments to the United States Constitution.

If you find beyond a reasonable doubt that the persons named in the indictment as a victim or victims were residing in a NewYYork Hotel, then you may find that they were inhabitants of the State of New York.

Now, you may recall that when I ennumerated the first of these four elements I said that the defendant or someone with whom the defendant was acting in concert. I said this because the guilt of a defendant may be established without proof that he personally did every act constituting the offense charged, if he aided and abetted another in the commission of a crime and had the requisite criminal intent, and the reason for that is that Section 2 of Title 18 reads as follows:

"Whoever commits an offense against the United States or aids, abets, counsels, or commands, induces or procures its commission, is punishable as a principal.

"Whoever willfully causes an act to be done which is directly performed by him or another would be an offense against the United States, is punishable as a principal."

In other words, to find aiding or abetting, it is necessary to find the defendant willfully associated himself in some way with the criminal events as charged and that he willfully participated in it as he would something he wished to bring about.

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If you want to find out whether the defendant aided or abetted you must ask yourselves such questions as "Did he willfully and knowingly associate himself with a criminal venture to defeat the constitutional rights of these inhabitants, if they were inhabitants, by taking away their money in violation of their constitutional rights under color of state authority. Did he participate in it as something he wished to bring about? Did he seek by this action to make it succeed?" If he did, and it was a crime, then he is an aider and abettor.

One may not willfully and intentionally remain ignorant of a fact important and material to his conduct in order to escape the consequences of the criminal law.

That is the end of what I am going to tell you about the counts. Those are the three counts and those are the elements. It may sound complicated to you, but I think, as reasonable and rational people you should be able to follow the charge. If you have any questions come in and I will try to help you but really, the critical thing for you, I think, in your determination may well be the determination of the credibility of the witnesses who testified here. How much weight you give to what they say. In weighing their testimony you must consider the relationship of the witness to the Government or the defendant, his bias or interest in the outcome of the case, his manner while you observed him testifying

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his candor and intelligence as you observed it, the extent to
which he has been corroborated or contradicted by other
credible evidence.

If you believe a witness has willfully sworn falsely before you with respect to a material element of the case, you are entitled to disregard his testimony completely, but you needn't do that because a witness may have been mistaken or may have even lied with respect to parts of his testimony and be telling the truth with respect to other parts.

The fact that a witness has been convicted of a crime may be considered by you as evidence of lack of morality which may make it more likely that he will lie upon the witness stand than somebody else that hasn't been convicted of a crime a person who has committed perjury must have his testimony even more carefully conisdered for the same reason obviously.

You are not to give any greater weight or credibility to the testimony of a witness who testifies in this case only because of the fact that he is an agent of the Government. His testimony is to be evaluated in the same manner as you would evaluate the testimony of any other witness.

The testimony of an accomplice or informed needs to be carefully scrutinized by you. In the first place, the fact that the witness committed a felony shows a defect in his character that may have made him more likely to lie on the witness stand than another person.

### (a) CHARGE TO THE JURY

In the second place, he can be punished for his own offense so that he may be amenable to suggestions by the Government as he tries to court the prosecutor's favor and avoids some degree of punishment himself. You have to decide whether the persons here were lying and if they were lying in what respect or if they were telling the truth in what respect.

I have allowed this testimony to come in. The weight of it is entirely for you to decide, not for me.

The mere number of witnesses and documents has no necessary relationship to the burden of proof.

If you wish any of the testimony repeated, you can request it in writing and I will try to find it for you with the aid of the attorneys. Obviously if we can avoid to have a lot of testimony repeated, it is desirable. We do not want to retry the case by rereading everything. If you want any of the exhibits, you may ask for them and we will send them in. If you want any help from me, if I can give it to you I will be glad to do it under the same circumstances.

You are entitled to your own opinions, but you should exchange views with your fellow jurors and listen carefully to each other. While you should not hesitate to change your opinions if you are convinced that another opinion is correct, your decision must be your own.

Any verdict you reach must be unanimous.

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Your oath will sum up your duty -- and that is, without fear or favor to any man, you will well and truly try
the issues before these parties, according to the evidence
given to you in court and the laws of the United States as
I have just explained them to you.

Now, we have had a prompt and good jury.

Is there any objection to excusing the two alternates?

MR. HERWITZ: No objection.

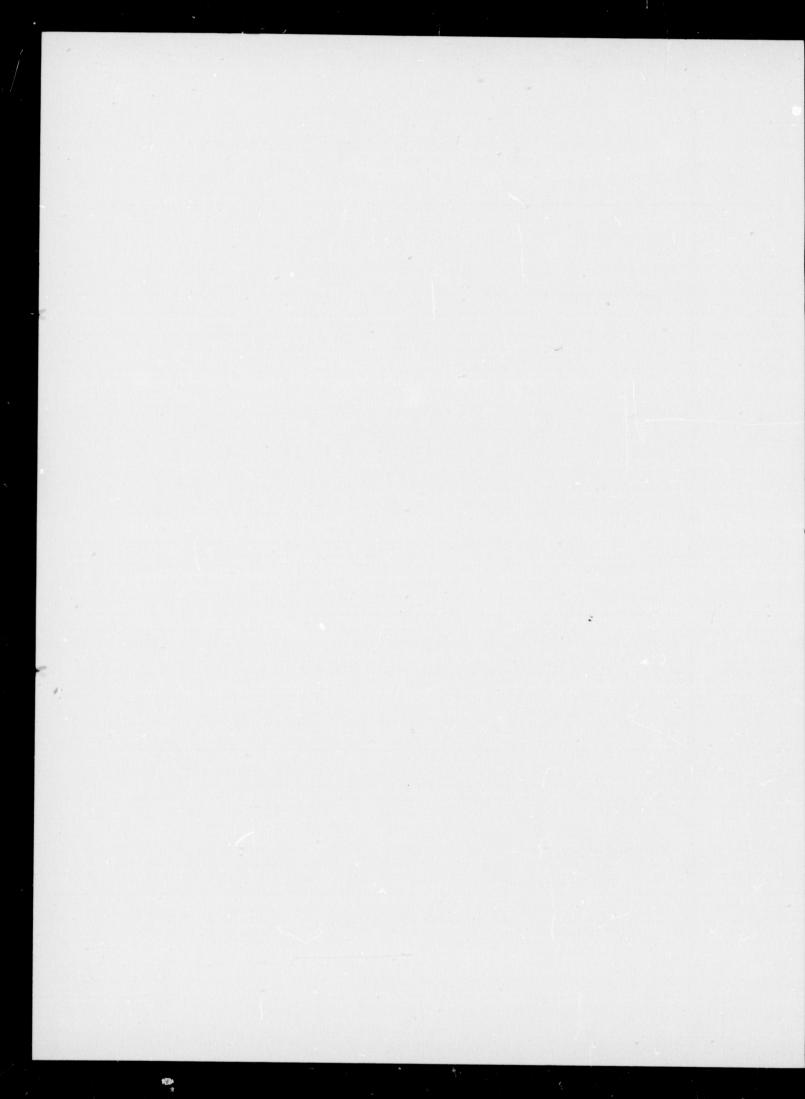
MR. KAPLAN: No objection.

THE COURT: The two alternates are excused. You can go home.

Do not discuss this case with eachoother or anyone else until the verdict is in. Good night.

The attorneys please come to the side bar in case I have mistaken or omitted anything.

(Continued next page.)



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